



## Legal Developments: First Quarter, 2015

### Orders Issued Under Bank Holding Company Act

#### Orders Issued Under Section 3 of the Bank Holding Company Act

IBERIABANK Corporation  
Lafayette, Louisiana

*Order Approving the Acquisition of a Bank Holding Company, the Merger of Banks, and Establishment of Branches*  
*FRB Order No. 2015-05 (February 13, 2015)*

IBERIABANK Corporation (“IBKC”), Lafayette, Louisiana, has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)<sup>1</sup> to acquire Florida Bank Group, Inc. (“FBG”), and thereby indirectly acquire its subsidiary bank, Florida Bank, both of Tampa, Florida. In addition, IBKC’s subsidiary state member bank, IBERIABANK, Lafayette, Louisiana, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”) to merge with Florida Bank, with IBERIABANK as the surviving entity.<sup>2</sup> IBERIABANK also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main office and branches of Florida Bank.<sup>3</sup>

Notice of the proposals, affording interested persons an opportunity to submit comments, has been published (79 *Federal Register* 65659-65660 (2014)).<sup>4</sup> As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General. The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA.

IBKC, with consolidated assets of approximately \$15.5 billion, is the 85th largest insured depository organization in the United States, controlling approximately \$12.3 billion in deposits.<sup>5</sup> IBKC controls IBERIABANK, which operates in Florida, Alabama, Arkansas, Louisiana, Tennessee, and Texas. IBERIABANK is the 26th largest depository institution in Florida, controlling deposits of approximately \$2.2 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.<sup>6</sup>

<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> 12 U.S.C. § 1828(c).

<sup>3</sup> 12 U.S.C. § 321. These branches are listed in the appendix.

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

<sup>5</sup> Asset and nationwide deposit-ranking data are as of September 30, 2014, unless otherwise noted.

<sup>6</sup> State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and banks.

FBG, with consolidated assets of approximately \$518 million, is the 1,289th largest insured depository organization in the United States, controlling approximately \$394 million in deposits. FBG controls Florida Bank, which operates only in Florida. Florida Bank is the 81st largest insured depository institution in Florida, controlling deposits of approximately \$406 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, IBKC would become the 83rd largest depository organization in the United States, with consolidated assets of approximately \$16.0 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. IBKC would control total deposits of approximately \$12.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Florida, IBKC would become the 25th largest depository organization, controlling deposits of approximately \$2.6 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

### Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank in a state other than its home state without regard to whether the transaction is prohibited under state law.<sup>7</sup> Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.<sup>8</sup> In addition, the Board may not approve an interstate acquisition if the bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States, or 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>9</sup>

For purposes of the BHC Act, the home state of IBKC is Louisiana, and FBG's home state is Florida.<sup>10</sup> IBKC is well capitalized and well managed under applicable law and has a satisfactory Community Reinvestment Act ("CRA")<sup>11</sup> rating. Florida has no minimum age requirement, and Florida Bank has been in existence for more than five years.

On consummation of the proposed transaction, IBKC would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, the combined organization would control less than 1 percent of the total amount of deposits of insured depository institutions in FBG's home state of Florida, the only state in which IBKC and FBG have overlapping banking operations. Accordingly, in light of all the facts of record, the Board is not prohibited from approving the proposal under section 3(d) of the BHC Act.

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

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

<sup>9</sup> 12 U.S.C. § 1842(d)(2)(A), (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

<sup>10</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 such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank's home state is the state in which the bank is chartered.

<sup>11</sup> 12 U.S.C. §§ 2901–2908.

### Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market. Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>12</sup>

IBKC and FBG have subsidiary depository institutions that compete directly in the Sarasota area, Florida banking market (“Sarasota market”).<sup>13</sup> The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative share of total deposits in insured depository institutions in the market (“market deposits”) that IBKC would control;<sup>14</sup> the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);<sup>15</sup> and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Sarasota market. On consummation of the proposal, the Sarasota market would remain unconcentrated, as measured by the HHI. The HHI change would be minimal, and numerous competitors would remain in the market.<sup>16</sup>

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking market in which IBKC and FBG compete or in any other rel-

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

<sup>13</sup> The Sarasota market is defined as Manatee and Sarasota counties less that portion that is both east of the Myakka River and south of Interstate 75 (currently the towns of Northport and Port Charlotte) plus the peninsular portion of Charlotte County west of the Myakka River (currently the towns of Englewood, Englewood Beach, New Point Comfort, Grove City, Cape Haze, Rotonda, Rotonda West and Placida), plus Gasparilla Island (the town of Boca Grande) in Lee County, all within Florida.

<sup>14</sup> Deposit and market share data are as of June 30, 2014, 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>15</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), [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

<sup>16</sup> BKC operates the 9th largest depository institution in the Sarasota market, controlling approximately \$467 million in deposits, which represent 2.7 percent of market deposits. FBG operates the 42nd largest depository institution in the same market, controlling deposits of approximately \$12 million, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, IBKC would remain the 9th largest depository institution in the market, controlling deposits of approximately \$480 million, which represent 2.8 percent of market deposits. The HHI for the Sarasota market would increase by one point to 908, and 42 competitors would remain in the market.

evant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

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

In reviewing a proposal under the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant non-banking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and 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 the financial and managerial resources and the proposed business plan.

IBKC and IBERIABANK are both well capitalized and would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange and a subsequent merger of the subsidiary depository institutions.<sup>17</sup> The asset quality, earnings, and liquidity of IBERIABANK and Florida Bank are consistent with approval, and IBKC appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. A commenter objected to the proposal, alleging that both the chairman of FBG and the president and chief executive officer ("CEO") of FBG<sup>18</sup> mismanaged the organization and violated their fiduciary duties, and that the CEO received excessive compensation and incentives.<sup>19</sup> The Board has reviewed the examination records of IBKC, FBG, and their subsidiary depository institutions, including assessments of their management, risk management systems, and operations. In addition, the Board has considered information provided by IBKC, the Board's supervisory experiences with IBKC and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws. Finally, the Board has considered examiners' views of the chairman of FBG and the CEO of FBG and Florida Bank.

IBKC, FBG, and their subsidiary depository institutions are each considered to be well managed. IBKC's existing risk management program, and its directorate and senior management, are considered to be satisfactory. The directors and senior executive officers of

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<sup>17</sup> As part of the proposed transaction, each share of FBG common stock would be converted into a right to receive cash and IBKC common stock, based on an exchange ratio. IBKC has the financial resources to fund the exchange.

<sup>18</sup> The CEO of FBG is also the chairman, president, and chief executive officer of Florida Bank.

<sup>19</sup> The commenter, a shareholder of FBG, also alleged that the proposed transaction is fraudulent under state and federal corporate and securities laws. These allegations relate to a shareholder dispute and may be adjudicated by a court of competent jurisdiction. See *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (1973).

IBKC have substantial knowledge of and experience in the banking and financial services sectors.<sup>20</sup>

The Board also has considered IBKC's plans for implementing the proposal. IBKC is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. IBKC would implement its risk management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, IBKC's and FBG's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and IBKC plans to integrate FBG's existing management and personnel in a manner that augments IBKC's management.

Based on all the facts of record, including IBKC's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board has concluded 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 IBKC and FBG in combatting money-laundering activities, are consistent with approval.

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

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the CRA.<sup>21</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 their safe and sound operation,<sup>22</sup> and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.<sup>23</sup>

The Board has considered all the facts of record, including reports of examination of the CRA performance of IBERIABANK and Florida Bank, data reported by IBERIABANK and Florida Bank under the Home Mortgage Disclosure Act ("HMDA"),<sup>24</sup> other information provided by IBERIABANK, confidential supervisory information, and the public comment received on the proposal. A commenter objected to the proposal on the basis of IBERIABANK's lending record to LMI borrowers and to minority individuals in the New Orleans, Louisiana, and Birmingham, Alabama, Metropolitan Statistical Areas ("MSAs"), as reflected in 2013 HMDA data.

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

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of

<sup>20</sup> IBKC's and IBERIABANK's board of directors and senior management would remain the same after consummating the acquisition.

<sup>21</sup> 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

<sup>22</sup> 12 U.S.C. § 2901(b).

<sup>23</sup> 12 U.S.C. § 2903.

<sup>24</sup> 12 U.S.C. § 2801 *et seq.*

the relevant institutions.<sup>25</sup> The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.<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 of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

*CRA Performance of IBERIABANK.* IBERIABANK was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Atlanta ("Reserve Bank") as of August 2013 ("IBERIABANK Evaluation"), which included full-scope evaluations of the bank's performance in both the New Orleans and Birmingham assessment areas.<sup>27</sup> IBERIABANK received "high satisfactory" ratings for each of the Lending Test, Investment Test, and Service Test. Examiners found that IBERIABANK makes a relatively high level of community development loans, that it has a good level of qualified investments, and that the bank provides an excellent level of community development services.

In evaluating the Lending Test, examiners found that IBERIABANK originated a substantial majority of its loans within its assessment areas, reflecting excellent assessment area penetration. Examiners found that the bank's penetration of loans among borrowers of different income levels and businesses of different sizes was adequate. Examiners noted that the bank made a high level of community development loans during the review period. The community development loans were for a variety of purposes, including financing affordable housing for LMI individuals, promoting economic development by financing small businesses that resulted in job creation and/or retention, revitalizing and/or stabilizing targeted LMI census tracts or other qualified geographies, and community services targeted to LMI individuals.<sup>28</sup>

In the New Orleans assessment area, examiners noted that IBERIABANK's lending was good overall. The geographic distribution of the bank's loans reflected adequate penetration throughout the assessment area, and the distribution of loans by borrower income was considered to reflect adequate penetration among individuals of different income levels and businesses of different revenue sizes. In addition, examiners noted that the bank was a leader in making community development loans in the New Orleans assessment area, making loans and investments in support of LMI individuals and community development efforts, as well as providing grants to assist qualified LMI homebuyers with down payment and closing costs. IBERIABANK also made significant contributions to support entrepreneurship, youth workforce development, charter schools and financial education. Examiners noted that the bank's investments and contributions exhibited responsiveness to sev-

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<sup>25</sup> See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

<sup>26</sup> 12 U.S.C. § 2906.

<sup>27</sup> The IBERIABANK Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and small business loans for the period January 1, 2011, through December 31, 2012. The evaluation period for community development loans and investments was June 1, 2011, through March 31, 2013. Due to IBERIABANK's significant expansion and growth during the review period, the bank's performance in 2012 was weighted slightly more than its performance in 2011 in determining the final rating for lending. The IBERIABANK Evaluation included a full-scope review of nine assessment areas: New Orleans-Metairie-Kenner MSA; Lafayette MSA; Little Rock-North Little Rock-Conway MSA; Fayetteville-Springdale-Rogers MSA; North Port-Bradenton-Sarasota MSA; Naples-Marco Island MSA; Birmingham-Hoover MSA; Houston-Sugar Land-Baytown MSA; Memphis-Forrest City Combined Statistical Area.

<sup>28</sup> Examiners found that IBERIABANK's community development lending was particularly strong in Louisiana, the bank's home state, noting that the bank partners with a community development financial institution to originate flexible mortgage products for LMI borrowers throughout the state.

eral identified needs, including the development of affordable housing and financial stability of LMI individuals.

In the Birmingham assessment area, examiners considered IBERIABANK's lending performance to be good. The geographic distribution of loans reflected good penetration throughout the assessment area and the distribution of borrowers reflected adequate penetration among individuals of different income levels and businesses of different revenue sizes. The bank was also considered a leader in making community development investments. Examiners noted that IBERIABANK provided a relatively high level of community development services in the Birmingham assessment area, in which bank employees provided service hours in various capacities for community development organizations.

Examiners found IBERIABANK's investment performance to be excellent in one state, good in three states, and adequate in two states.<sup>29</sup> Most of the bank's qualified investments supported affordable housing through the purchase of securities backed by government-guaranteed mortgages to qualified LMI borrowers. The bank invested in several Low-Income Housing Tax Credit projects that provide affordable rental housing to LMI individuals. Examiners also noted that the bank was very involved with recovery efforts in New Orleans and across the Gulf Coast after Hurricane Katrina, making investments through the New Market Tax Credit program to help stabilize and revitalize LMI and other communities that were affected by the hurricane. In addition, IBERIBANK made grants to provide down payment and closing cost assistance to LMI borrowers.

In evaluating the Service Test, examiners found that IBERIABANK's performance was good in four states and adequate in two states.<sup>30</sup> Examiners found the bank's retail delivery systems to be reasonably accessible to geographies and to individuals of different income levels. Examiners noted that the bank offers several retail products designed to meet the financial needs of lower-income customers and small businesses and that the bank participates in organized programs and other outreach efforts to expand banking access to LMI customers across its entire banking footprint. Examiners also found that the bank provided an excellent level of community development services throughout its assessment areas. During the review period, the bank and its employees provided over 10,000 hours of community development services through service activities aimed at promoting or facilitating affordable housing for LMI individuals, economic development, and the revitalization of LMI areas.

*CRA Performance of Florida Bank.* Florida Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank in October 2013 ("Florida Bank Evaluation").<sup>31</sup> The bank received a "satisfactory" rating for the Lending Test and Community Development Test.

In evaluating the Lending Test, examiners noted that a substantial majority of the bank's loans were made within its assessment areas, demonstrating the bank's willingness to meet the credit needs of its assessment areas. Examiners found that the bank's geographic distri-

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<sup>29</sup> Examiners found that the bank's performance under the Investment Test was "excellent" in Louisiana, "good" in Alabama, Arkansas, and Texas, and "adequate" in Florida and Tennessee.

<sup>30</sup> Examiners found that the bank's performance under the Service Test was "good" in Arkansas, Florida, Louisiana, and Tennessee, and "adequate" in Alabama and Texas.

<sup>31</sup> The Florida Bank Evaluation was conducted using Intermediate Small Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and small business loans for the period January 1, 2012, through December 31, 2012. The evaluation period for community development loans, investments, and service activities was August 1, 2011, through August 1, 2013. The Florida Bank Evaluation included a full-scope evaluation of the Tampa-St. Petersburg-Clearwater MSA.

bution of loans and the distribution of loans by business income and borrower income were reasonable. Examiners also commented favorably on the bank's loan-to-deposit ratio.

Examiners found that Florida Bank demonstrated adequate responsiveness to community development needs in its assessment areas through a combination of community development loans, qualified investments, and community development services. The bank's community development lending was aimed at providing affordable housing and promoting economic development by financing small businesses.

### *B. Fair Lending and Other Consumer Protection Laws*

The Board has considered the records of IBERIABANK and Florida Bank in complying with fair lending and other consumer protection laws. As part of its evaluation, the Board reviewed the IBERIABANK and Florida Bank Evaluations, assessed the records of IBERIABANK's HMDA data, and considered the comment received on the proposal as well as other agencies' views on the records of performance of IBERIABANK and Florida Bank under fair lending laws. The Board also considered IBERIABANK's fair lending policies and procedures. In addition, the Reserve Bank concluded a fair lending examination of IBERIABANK during the pendency of this application, including a redlining review across IBERIABANK's assessment areas.<sup>32</sup> The Board has considered the findings of that examination in its analysis.

*HMDA Data and Fair Lending Analysis.* The commenter criticized IBERIABANK's record of mortgage lending to minority individuals and to minority census tracts based on 2013 HMDA data for the bank's New Orleans and Birmingham assessment areas. The commenter asserted that IBERIABANK's volume of mortgage loans to minority communities, particularly African Americans, is low compared to the volume of loans originated to these populations and communities by the aggregate of all lenders and compared to the demographics of these areas.<sup>33</sup>

IBERIABANK responded by noting that in the New Orleans MSA, its 2013 HMDA lending levels generally exceeded or were comparable to those of aggregate lenders. Of the 25 branches IBERIABANK operates in the New Orleans assessment area, five are located in LMI tracts, and an additional 15 branches are within close proximity of LMI tracts. Four of those branches are located in tracts in which a majority of the population are minority individuals ("majority minority tracts"). The bank stated that it is serving the community reinvestment needs in New Orleans through community development lending, investments, and services, particularly in areas affected by Hurricane Katrina. The bank reported that it made community development-related loans in 2013 and 2014, such as to finance the acquisition and development of a former public school building in a low-income census tract into an affordable multi-family rental property for low-income senior citizens. The bank also reported that it made investments in CRA-eligible mortgage backed securities and tax credit qualifying investments. In addition, IBERIABANK stated that its employees donated time to community service organizations and charities that serve LMI and minority individuals and areas as board members, home buyer education counselors, and financial literacy instructors.

<sup>32</sup> During a redlining review, examiners assess the risk that an institution is providing unequal access to credit, because of the race, color, national origin, or other prohibited characteristics of the residents of the area in which the property is located.

<sup>33</sup> Aggregate lending is defined as the number of loans originated and purchased by all reporting lenders as a percentage of the aggregate number of loans originated and purchased by all reporting lenders in the metropolitan or assessment area. In this context, aggregate lending is considered an indicator of the lending opportunities in the geographic area in which the bank is located.

With respect to the Birmingham MSA, IBERIABANK stated that in 2013 its percentage of loans to minority individuals and majority minority census tracts exceeded those of the aggregate. Of the nine branches IBERIABANK operates in the Birmingham assessment area, two are in LMI tracts, and another two branches are within close proximity to LMI tracts. Two branches are located in majority minority tracts. IBERIABANK represents that, in the Birmingham assessment area, it funded community development loans to finance the construction of a low-income housing complex and to refinance an affordable multifamily rental property in a moderate-income census tract near downtown Birmingham. The bank also reported that its employees donated time to a variety of community organizations in the Birmingham area, including local housing authorities, public schools, United Way offices, and other service organizations.

IBERIABANK stated that it maintains an active outreach program for LMI and minority individuals and communities across all of its assessment areas. The bank has engaged in direct marketing campaigns to improve the volume of mortgage applications for LMI and minority individuals, and routinely places advertisements in local publications that serve minority communities. In addition, IBERIABANK employees donated time in 2014 to promote financial literacy in their communities. The bank has also joined the nationwide “Bank On” initiative in six of its banking markets, including Birmingham.<sup>34</sup> The bank has created a financial product in connection with its participation in Bank On initiatives, and anticipates expanding its involvement in the future. IBERIABANK also provides special loan programs that provide more flexible underwriting criteria for LMI borrowers, and loan closing assistance.

The Board believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone does not provide a sufficient basis on which to conclude whether the bank excluded or denied credit to any group on a prohibited basis.<sup>35</sup> Fully evaluating a bank’s compliance with fair lending laws and regulations would require a thorough review of the bank’s application and underwriting policies and procedures, as well as access to information contained in the loan application files, to determine whether the observed lending disparities persist after taking into account legitimate underwriting factors.

The Board considered and placed great emphasis on information collected by, and on the assessment of, the Reserve Bank’s fair lending examiners during their recent Fair Housing Act (“FHA”) fair lending review at IBERIABANK. Examiners focused their review on IBERIABANK’s residential mortgage lending practices, including a review of underwriting, pricing, redlining, and steering risks. Examiners determined that IBERIABANK has a satisfactory fair lending compliance management program that has sufficient policies and

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<sup>34</sup> “Bank On” programs are voluntary partnerships between local or state government, financial institutions, and community-based organizations that provide low-income unbanked and under-banked individuals with free or low-cost starter or “second chance” bank accounts and access to financial education. In addition to the Birmingham market, IBERIABANK participates in the Bank On initiative in the Baton Rouge, Lafayette, Shreveport, Sarasota, and Southwest Florida banking markets.

<sup>35</sup> The data, for example, do not account for the possibility that an institution’s outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of any applicant’s creditworthiness. In addition, information on credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) is not always available from HMDA data.

procedures in place and is effectively overseen by the bank's board and senior management. The bank's internal control functions were considered independent from its business lines, with an appropriate separation of duties. The bank's fair lending training program was found to be effective, with procedures in place to identify, report, and resolve fair lending risks.

Examiners also conducted a redlining analysis, which considered the allegations made by the commenter, in nine of IBERIABANK's assessment areas, including New Orleans and Birmingham. Examiners conducted a four-pronged analysis for each assessment area, in which they considered the level of redlining risk based on a review of the appropriateness of the bank's CRA assessment area; the bank's lending record; the bank's branching pattern; and the bank's marketing and outreach efforts.

For the New Orleans assessment area, examiners reviewed the bank's 2011, 2012, and 2013 HMDA data. In majority minority census tracts, IBERIABANK's loan applications and loan originations generally exceeded or were comparable to the aggregate, confirming the information provided by the bank. Examiners also viewed favorably the bank's outreach efforts to majority minority areas in the market, and found that the bank's branching patterns exhibit low redlining risk. Overall, examiners concluded that the bank's redlining risk in the New Orleans assessment area is low.

For the Birmingham assessment area, examiners reviewed the bank's 2011, 2012, and 2013 HMDA data. In majority minority census tracts, IBERIABANK's loan applications and loan originations exceeded the aggregate in each year, in some cases significantly. Examiners found that the bank's lending pattern is closely aligned with the location of its branches, and that its HMDA lending is clustered in the center of the assessment area where the majority minority tracts are concentrated. Overall, examiners concluded that the bank's redlining risk in the Birmingham assessment area is low.

*IBERIABANK's Fair Lending Program.* IBERIABANK has established policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations, and these are considered satisfactory from a supervisory perspective.

The bank's Compliance Department is responsible for establishing and maintaining the bank's fair lending policy and managing its fair lending compliance program. The Compliance Department, together with other business units, identifies, plans for and implements new and revised regulations; evaluates new and existing products; develops and updates policies and procedures; reviews advertising and marketing material and disclosures; identifies compliance risks and assists with risk mitigation; assists with internal compliance audits and regulatory examinations; and develops, coordinates, and oversees the bank's compliance training program, which is required for all staff, management, and board members.

The Compliance Department conducts an annual global risk assessment that identifies and measures risk inherent in the bank's lending processes and determines the appropriate controls and monitoring necessary to mitigate those risks. The bank uses software to conduct statistical reviews and analyses that generally include focal point analysis, regression analysis, comparative file reviews, mapping, and redlining analyses. These analyses, which are conducted separately for HMDA data, credit cards, small business loans, and other products, include data points such as credit scores, loan-to-value ratios and debt-to-value ratios. Pricing- and underwriting-override reviews are also analyzed to determine whether individuals' protected class attributes affect the ability to receive an override.

IBERIABANK maintains a secondary review process for all loan denials. The second review is conducted to ensure that the bank's lending standards are applied fairly and uniformly to all applicants, that all possible avenues of approval have been explored prior to formal denial, and that the application was not denied based on the applicant's race, sex, sexual orientation, color, national origin, religion, age, marital status, disability or other prohibited basis. The second review is conducted by an underwriter within 10 days of the original loan denial, and the denial and second review are both documented in the loan file. If the second review concludes that the applicant qualifies for the loan or there may be alternative loan options, the application is redirected for further processing.

The Compliance Department also conducts reviews analyzing the policies governing the bank's lending activities and the use and appropriateness of its loan products. The analysis includes a review to determine whether the policies and procedures could result in lending discrimination across the bank's lending areas and whether the policies and procedures provide consistency throughout the application and credit approval process.

#### *C. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization*

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

IBKC represents that the proposal would provide customers of the combined organization access to an expanded branch network and would offer additional or expanded services to current Florida Bank customers, including expanded internet and mobile banking services and customer service availability. The combined organization would also offer consumer loan and retail deposit products not currently offered to Florida Bank customers. Several of these loan products are specifically targeted to LMI customers, including home improvement loans, credit builder loans, and expanded home mortgage options, including FHA and VA product lines and other low down payment programs targeted to first-time homebuyers. The bank would also offer an expanded line of low-cost retail deposit account options, including a "second chance" deposit account designed to provide an entry-level account for unbanked and underbanked individuals.

#### *D. Conclusion on Convenience and Needs Considerations*

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by IBERIABANK, confidential supervisory information, and the public comment on the proposal. Based on the Board's evaluation of the HMDA data, evaluation of the lending operations and compliance programs of IBERIABANK and Florida Bank, review of examination reports, and all the facts of record, the Board believes that the convenience and needs factor, including the CRA record of the insured depository institutions involved in this transaction, is consistent with approval of the application.

### **Financial Stability**

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a

proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system.”<sup>36</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 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>37</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 to the broader economy.<sup>38</sup>

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, IBERIABANK would have approximately \$16 billion in consolidated assets and would not be likely to pose systemic risks. The Board generally presumes that a merger resulting in a firm with less than \$25 billion in consolidated assets will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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

### **Establishment of Branches**

IBERIABANK has applied under section 9 of the FRA to establish branches at the current branch locations of Florida Bank. The Board has assessed the factors it is required to consider when reviewing an application under section 9 of the FRA.<sup>39</sup> For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

<sup>36</sup> Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 123 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

<sup>37</sup> Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

<sup>38</sup> For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

<sup>39</sup> 12 U.S.C. § 322; 12 CFR 208.6. Specifically, the Board has considered IBERIABANK’s financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. In addition, upon consummation of the proposed transaction, IBERIABANK’s investments in bank premises would remain within legal requirements under 12 CFR 208.21.

## Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved.<sup>40</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, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by IBKC and IBERIABANK with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective February 13, 2015.

Voting for this action: Chair Yellen, Governors Tarullo, Powell, and Brainard. Absent and not voting: Vice Chairman Fischer.

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

Hillister Enterprises, II, Inc.  
Beaumont, Texas

Umphrey II Family Limited Partnership  
Beaumont, Texas

CBFH, Inc.  
Orange, Texas

*Order Approving the Acquisition of a Bank Holding Company*  
*FRB Order No. 2015-02 (January 15, 2015)*

CBFH, Inc. ("CBFH"), Orange, and its top-tier and immediate parent companies, Hillister Enterprises, II, Inc. ("Hillister") and Umphrey II Family Limited Partnership ("Umphrey"), both of Beaumont, all of Texas (collectively, "Applicants"), have requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")<sup>1</sup> to

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<sup>40</sup> A commenter requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

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acquire MC Bancshares, Inc. (“MC Bancshares”) and thereby indirectly acquire its subsidiary, Memorial City Bank, both of Houston, Texas. Under the proposal, MC Bancshares would be merged into CBFH, and Memorial City Bank would be merged into CBFH’s wholly owned subsidiary, CommunityBank of Texas, National Association (“CommunityBank”), Beaumont, Texas; CBFH and CommunityBank would be the surviving entities.<sup>2</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (79 *Federal Register* 21930 (2014)).<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.

CBFH, with consolidated assets of approximately \$2.6 billion, is the 295th largest insured depository organization in the United States, controlling less than 1 percent of nationwide deposits. CBFH controls CommunityBank, which operates only in Texas. CommunityBank is the 28th largest insured depository institution in Texas, controlling approximately \$2.2 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.<sup>4</sup>

MC Bancshares, with consolidated assets of approximately \$289 million, controls less than 1 percent of nationwide deposits. MC Bancshares controls Memorial City Bank, which operates only in Texas. Memorial City Bank is the 206th largest insured depository institution in Texas, controlling approximately \$259 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, CBFH would become the 278th largest depository organization in the United States, with consolidated assets of approximately \$2.8 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. In Texas, CBFH would become the 26th largest depository organization, with total deposits of approximately \$2.5 billion.

### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>5</sup>

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<sup>1</sup> 12 U.S.C. § 1842. Hillister and Umphrey do not have any operations, employees, or investments other than the controlling ownership of CBFH.

<sup>2</sup> The merger of Memorial City Bank into CommunityBank is subject to the approval of the Office of the Comptroller of the Currency (“OCC”) under the Bank Merger Act. 12 U.S.C. § 1828(c). The OCC approved the bank merger on May 22, 2014 (Letter from Karen H. Bryant, Deputy Director for District Licensing, Southern District, to Patrick R. Hanchey, Bracewell and Giuliani LLP (May 22, 2014)). On May 20, 2014, a commenter protested the approval of the holding company application but not the bank merger application.

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

<sup>4</sup> State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, cooperative banks, industrial banks, and savings banks.

<sup>5</sup> 12 U.S.C. § 1842(c)(1).

CommunityBank and Memorial City Bank compete directly in the Houston, Texas banking market (the “Houston banking market”).<sup>6</sup> The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative shares of total deposits in insured depository institutions in the market (“market deposits”) controlled by Applicants and MC Bancshares;<sup>7</sup> the concentration levels of market deposits and the increase in those levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);<sup>8</sup> and other characteristics of the market.

### Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both parent-only and consolidated bases, as well as the financial condition of the subsidiary depository institutions and the organizations’ significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the combined organization to absorb the costs of the proposal and 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.

In this case, CBFH and CommunityBank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction involves the acquisition and merger of a bank holding company and its subsidiary bank and is structured as a cash transaction. The asset quality, earnings, and liquidity of CommunityBank and Memorial City Bank are consistent with approval, and CBFH appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions’ operations. Based on its review of the record, the Board finds that the CBFH organization has sufficient financial resources to effect the proposal.<sup>9</sup>

<sup>6</sup> The Houston banking market includes Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, and Waller counties.

<sup>7</sup> Deposit, market share, and ranking data are as of June 30, 2014, 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 of 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>8</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 anti-competitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. See Press Release, Department of Justice (August 19, 2010), [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

<sup>9</sup> The aggregate cash consideration to be paid in connection with the proposal is approximately \$56.4 million, and CBFH has sufficient resources to fund the proposed transaction.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of CBFH, MC Bancshares, and their insured depository institution subsidiaries, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

CBFH, MC Bancshares, and their insured depository institution subsidiaries are each considered to be well managed. CBFH's existing risk-management program and its directorate and senior management are considered to be satisfactory. The senior executive officers of CBFH and MC Bancshares have substantial knowledge of and experience in the banking sector.

The Board also has considered CBFH's plans for implementing the proposal. CBFH has a demonstrated record of successfully integrating organizations into its operations and risk-management systems following acquisitions. CBFH would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, CBFH's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and CBFH is proposing to integrate the MC Bancshares organization's existing management and personnel in a manner that augments CommunityBank's management.<sup>10</sup>

CBFH's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval.

Based on all the facts of record, the Board has concluded 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 CBFH and MC Bancshares in combating money-laundering activities, are consistent with approval.

### **Convenience and Needs Considerations**

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").<sup>11</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 their safe and sound operation,<sup>12</sup> and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.<sup>13</sup>

The Board has considered all the facts of record, including reports of examination of the CRA performance of CommunityBank and Memorial City Bank, other information provided by Applicants, confidential supervisory information, and the public comment

<sup>10</sup> On consummation, five individuals currently serving as management officials of the MC Bancshares organization will be added to CommunityBank's management team.

<sup>11</sup> 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

<sup>12</sup> 12 U.S.C. § 2901(b).

<sup>13</sup> 12 U.S.C. § 2903.

received on the proposal. The Board received one comment that objected to the proposal, alleging both that the proposed acquisition does not have clearly demonstrated public benefits and that CommunityBank is not meeting the needs of LMI and minority communities in the Beaumont-Port Arthur Metropolitan Statistical Area (“Beaumont-Port Arthur MSA”) as reflected in 2012 HMDA data.

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

As provided in the CRA, the Board evaluates an institution’s performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.<sup>14</sup> The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution’s record of meeting the credit needs of its entire community, including LMI neighborhoods.<sup>15</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 of the institution’s overall record of performance under the CRA by its appropriate federal supervisor.

*CRA Performance of CommunityBank.* CommunityBank was assigned an overall “satisfactory” rating at its most recent CRA performance evaluation by the OCC in January 2013 (“CommunityBank Evaluation”). CommunityBank received a “high satisfactory” rating for the Lending Test and “low satisfactory” ratings for both the Investment Test and the Service Test.<sup>16</sup>

With respect to the Lending Test, examiners observed that CommunityBank’s primary lending focus was on commercial and small business loans<sup>17</sup> and found that the bank’s small business lending activity in both the Beaumont and Houston assessment areas was good. The bank had good performance in funding small loans (less than or equal to \$1 million) to businesses in moderate-income census tracts for the Beaumont assessment area and excellent performance in the Houston assessment area.

Examiners noted that CommunityBank’s overall distribution of home purchase loans by census-tract income level was adequate. In the Houston assessment area, CommunityBank had adequate to good performance in LMI census tracts with respect to originations of home purchase, improvement, and refinance loans. In the Beaumont assessment area, examiners noted areas for improvement in originations for home purchase and home improvement loans to borrowers located in LMI census tracts.

Examiners did not identify any unexplained or conspicuous gaps in geographic distribution of CommunityBank’s home mortgage and small business loan products. Further, examiners noted that the bank’s community development lending, which included affordable hous-

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<sup>14</sup> See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

<sup>15</sup> 12 U.S.C. § 2906.

<sup>16</sup> The evaluation was prepared using the interagency evaluation procedures for large institutions. The evaluation period for the Lending Test was from January 1, 2009, through December 31, 2011, except for community development loans. The Investment Test, the Service Test, and the review of community development loans covered the period from July 13, 2009, through January 28, 2013. The evaluation included a full-scope review of both the Beaumont and Houston assessment areas and a limited-scope review of the Beaumont Non-Metropolitan Statistical Area.

<sup>17</sup> At the time of the evaluation, commercial real estate loans and commercial loans represented approximately 70 percent of CommunityBank’s loan portfolio. One- to four-family and multifamily lending represented 12 percent of the portfolio, and construction and land development loans represented 11 percent. Consumer lending represents 4.7 percent. All other loan originations accounted for less than 1 percent of the bank’s loan portfolio.

ing loans that benefited low- and moderate-income families in both assessment areas, was a positive contributing factor to examiners' overall assessment of the Lending Test.

With respect to the Investment Test, OCC examiners found that CommunityBank's level of qualified community development investments was adequate in both the Beaumont and Houston assessment areas. Examiners noted that qualifying investments helped fund several programs, including affordable housing, social and health services, and economic development. Examiners noted room for improvement by the bank in making more complex and innovative investments and in making investments in the Houston assessment area.

With respect to the Service Test, OCC examiners concluded that CommunityBank demonstrated low satisfactory performance in providing community development services in the Beaumont and Houston assessment areas. Nevertheless, examiners deemed the bank's delivery systems to be reasonably accessible to businesses and individuals of different income levels and different geographies in the assessment areas. In addition, examiners noted that CommunityBank's efforts demonstrated a commitment to community development through its provision of technical assistance on financial and banking-related matters to community groups in the Beaumont assessment area.

Memorial City Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC") in February 2013 ("Memorial City Bank Evaluation").<sup>18</sup> *CRA Performance of Memorial City Bank*—The evaluation assessed the following performance factors: loan-to-deposit ratio, lending concentration inside the assessment area, borrower profile loan distribution, geographic loan distribution, and response to consumer complaints. FDIC examiners concluded that Memorial City Bank demonstrated a reasonable record regarding its average net loan-to-deposit ratio; an adequate record of concentrating its loans inside its assessment area, which was supported by an adequate record of small business loans; a reasonable record regarding its borrower profile loan distribution, based on its reasonable record regarding small business loans; and could improve its record of geographically distributing its loans, particularly with respect to the dispersion of small business loans throughout the assessment area. FDIC examiners also noted that the bank did not receive any CRA-related complaints since the previous evaluation.

#### *B. Fair Lending Record and Public Comment on the Proposal*

The Board has considered the record of CommunityBank in complying with fair lending and other consumer protection laws. As part of this evaluation, the Board reviewed the CommunityBank and the Memorial City Bank Evaluations and considered the comment on the application, the Applicants' response, and the OCC's view on CommunityBank's record of performance under the fair lending laws. The Board considered CommunityBank's fair lending policies and procedures and confidential supervisory information, and conferred with the OCC concerning the comment received on the proposal.

The commenter expressed concerns, based on 2012 HMDA data, that CommunityBank was not meeting the credit needs of LMI and minority communities in the Beaumont-Port Arthur MSA. In particular, the commenter alleged that, compared to the aggregate of all lenders in the Beaumont-Port Arthur MSA, CommunityBank made a lesser proportion of

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<sup>18</sup> The Memorial City Bank Evaluation was conducted using Small Bank CRA evaluation procedures in Memorial City Bank's single assessment area, which comprises the majority of the western portion of Harris County in the Houston-Sugar Land-Baytown MSA in Texas. The evaluation covered the period from January 19, 2010, through February 4, 2013.

prime home mortgage loans to African American, Hispanic, and LMI borrowers and borrowers in LMI census tracts.<sup>19</sup>

Applicants contend that HMDA lending data do not fairly represent CommunityBank's CRA performance because home mortgage loans make up only approximately 14 percent of the bank's lending activities, while 70 percent of its lending is to small and medium-sized businesses. Applicants also represent that CommunityBank has not received any consumer complaints, comments, or other allegations from local community-based organizations regarding the bank's CRA performance or non-compliance with fair lending laws or regulations.

Applicants also note that CommunityBank engaged in marketing campaigns in 2013 and 2014 to reach historically underserved demographics for business and mortgage lending in the Houston and Southeast Texas markets served by the bank.<sup>20</sup> The bank added several loan products to assist in serving LMI and rural markets in the first half of 2014. In addition, CommunityBank has purchased newly originated LMI whole-loan mortgages.

The Board notes that the CRA does not require insured depository institutions to engage in any particular type of credit activity, and instead encourages institutions to serve the credit needs of the entire community. The Board has recognized that institutions may meet these responsibilities by providing credit to small businesses throughout the relevant community.

Nevertheless, the Board is concerned when HMDA data for an institution may indicate lending disparities and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether CommunityBank excluded or denied credit to any group on a prohibited basis.<sup>21</sup>

Because of the limitations of HMDA data, the Board also has considered other information, including examination reports that provide on-site evaluations of compliance by CommunityBank with fair lending laws and regulations. The Board has considered that CommunityBank's HMDA data were reviewed and considered by examiners in the OCC's

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<sup>19</sup> The commenter also asserted that CommunityBank's lending activities did not reflect an appropriate balance between prime and high-priced loans. In response, Applicants explained that CommunityBank had formed a mortgage department to serve commercial lending clients that requested residential mortgages, rather than referring such clients to competitors, and that high-priced mortgage loans had resulted from the fact that the bank previously had offered only one mortgage loan product that it retained in its loan portfolio ("portfolio product"), which CommunityBank stopped offering in August 2013. Currently, CommunityBank offers two mortgage portfolio products that are designed not to generate high-priced loans. Applicants also indicated that they do not intend to allow these products to become Higher Priced Covered Transactions (i.e., high-priced loans) under the Consumer Financial Protection Bureau's Ability-to-Repay and Qualified Mortgage regulations.

<sup>20</sup> The campaigns included direct mail and print ads in publications that specifically targeted Hispanic and African-American communities.

<sup>21</sup> The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than do other institutions, and do not provide a basis for an independent assessment of an applicant's creditworthiness. In addition, data on credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not always available from HMDA data.

January 2013 CRA performance evaluation. This evaluation by examiners found no evidence of discriminatory lending practices.

The Board also has consulted with the OCC with respect to CommunityBank's record of fair lending performance since the CommunityBank Evaluation. In this regard, since its January 2013 CRA examination, CommunityBank has undertaken a number of measures to increase its home mortgage lending to LMI and minority individuals and communities, including direct-mail marketing campaigns to these communities promoting the bank's home mortgage products, print advertisements in publications targeting Hispanic and African American communities, and the development of a new "Community Development Home Improvement Loan" product designed to meet the needs of LMI homeowners. In addition, as noted above, the bank replaced a portfolio product that generated higher-priced mortgage loans with portfolio home mortgage products that are designed not to generate higher-priced loans. The bank also has augmented its consumer compliance, including its fair lending, infrastructure. For example, the bank recently hired a chief compliance officer with extensive large bank experience. In addition, the bank has approved or hired additional experienced compliance officers.

*CommunityBank's Fair Lending Program.* Applicants indicate that CommunityBank has instituted a consumer compliance and fair lending program, with policies, procedures, and practices to ensure compliance with fair lending laws and that credit standards and policies are fair and responsive to all applicants. This includes a second-level review process for all approvals, declines, and counteroffers related to all consumer loans and all declined mortgage loans. In addition, the bank's policies require all consumer loans to have standardized terms, underwriting criteria, and pricing, with no discretion by loan officers to vary the terms. Applicants indicated that any exceptions must be justified, documented, and approved by the bank's fair lending officer, and the exceptions are monitored and reported to the board of directors on a quarterly basis.<sup>22</sup> CommunityBank's risk-management systems and its policies and procedures for assuring compliance with fair lending laws would be implemented at the combined organization.

#### *C. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization*

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. The commenter alleged that the proposed acquisition does not have clearly demonstrated public benefits.

Applicants represent that the combined organization would have the ability to deliver a more in-depth menu of products and services to customers currently served by Memorial City Bank, thus providing customers greater convenience through access to a broader range of financial products and services. Memorial City Bank's customers also would have access to CommunityBank's call center and mobile applications, which would increase access to banking services; significantly larger branch and ATM networks; and a larger legal lending limit. Moreover, Applicants state that the proposal would provide opportunities to achieve cost savings for the combined organization by consolidating redundant functions, including retail credit underwriting and data processing. Applicants also note that the combined organization would be able to provide customers with banking benefits through more efficient and cost-effective provisions of banking services and would be able

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<sup>22</sup> Mortgage loan exceptions, in particular, are monitored and reported to the Directors Loan Committee quarterly.

to dedicate additional resources to meeting the banking needs of Memorial City Bank customers.

#### *D. Conclusion on Convenience and Needs Considerations*

The Board has considered all the facts of record, information provided by Applicants, confidential supervisory information, and the public comment on the proposal. Based on the Board's review of examination reports and the CRA records of the insured depository institutions involved in this transaction, and on its consultations with the OCC, the Board concludes that the convenience and needs factor, including the CRA records of the institutions involved, is consistent with approval of the application. The Board encourages CommunityBank to continue to seek opportunities to assist in meeting the credit needs of the communities it serves.

#### **Financial Stability**

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."<sup>23</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 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>24</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 to the broader economy.<sup>25</sup>

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, CBFH would have approximately \$2.8 billion in consolidated assets, and by any of a number of alternative measures of firm size, CBFH would not be likely to pose systemic risks. The Board generally presumes that a merger resulting in a firm with less than \$25 billion in total consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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

<sup>23</sup> Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

<sup>24</sup> Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

<sup>25</sup> For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

### Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.<sup>26</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 the Applicants with all the conditions imposed in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective January 15, 2015.

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

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

KSRS, LLC  
Osceola, Missouri

*Order Approving the Formation of a Bank Holding Company*  
*FRB Order No. 2015-12 (March 23, 2015)*

KSRS, LLC ("KSRS"), Osceola, Missouri, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")<sup>1</sup> to become a bank holding company by retaining 32.11 percent of the voting shares of Bancorp II, Inc. ("Bancorp"), Kansas City, Missouri, and thereby indirectly retaining control of its subsidiary bank, Citizens Community Bank, Pilot Grove, Missouri.

<sup>26</sup> The commenter requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

<sup>1</sup> 12 U.S.C. § 1842(a)(1).

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (*79 Federal Register* 32956 (2014)).<sup>2</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.

KSRS is a newly organized limited liability company formed for the purpose of acquiring control of Bancorp. Bancorp, with consolidated assets of approximately \$106.2 million, is the 4,455th largest insured depository organization in the United States, controlling approximately \$94.9 million in deposits.<sup>3</sup> Bancorp operates only in Missouri. Citizens Community Bank is the 186th largest insured depository institution in Missouri, controlling deposits of approximately \$94.9 million, which represent less than 1 percent of total deposits of insured depository institutions in that state.<sup>4</sup>

### **Competitive Considerations**

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>5</sup>

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

KSRS did not previously control a depository institution and does not currently control any other depository institution. Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

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

In reviewing a proposal under the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews the financial condition of the organizations involved, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board also evaluates the effect of the transaction on the financial condition of the applicant, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future

<sup>2</sup> 12 CFR 262.3(b).

<sup>3</sup> Asset and nationwide deposit-ranking data are as of December 31, 2014, unless otherwise noted.

<sup>4</sup> State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

<sup>5</sup> 12 U.S.C. § 1842(c)(1).

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

The Board also has considered the managerial resources of the applicant and the public comment received on the proposal. The Board received a comment objecting to the proposal principally on grounds involving the manner in which KSRS acquired the Bancorp shares. KSRS acquired from another financial institution a defaulted note (the “Note”) on which the commenter was the obligor, secured by 32.11 percent of Bancorp shares. The commenter also opposed the proposal on several other grounds related to alleged actions of KSRS and its principals. In particular, the commenter alleged that, prior to acquiring the Note, the principals of KSRS violated the Change in Bank Control Act (“CIBC Act”)<sup>6</sup> when, acting in concert with a group of investors in 2011, they acquired shares of Bancorp without regulatory approval.<sup>7</sup> The commenter also argued that one of the principals of KSRS breached his fiduciary duties to Bancorp by using information gained in his capacity as a Bancorp director to purchase the Note.<sup>8</sup>

In considering the managerial resources of the applicant, the Board also considered information provided by the applicant. As an initial matter, the Board notes that an acquisition of a loan in default that is secured by voting securities of a state member bank or bank holding company is considered an acquisition of those securities.<sup>9</sup> KSRS represented that its principals were unaware that acquiring the Note required prior approval of the Federal Reserve under the BHC Act or the CIBC Act. KSRS stated that its principals thought, based on advice received from a bank regulatory consultant, that regulatory approval would only be required prior to directly acquiring Bancorp shares.

After acquiring the Note, KSRS conducted a public auction for the Bancorp shares in which it was the winning bidder. Under the terms of the auction, the winning bidder cannot consummate the transaction until receiving regulatory approval to acquire the shares. Accordingly, KSRS filed the BHC Act application following the auction.

KSRS represents that its principal acquired information about the Note in his personal capacity and that he did not use his position as a director of Bancorp to benefit KSRS in the transaction. Further, KSRS represents that, prior to acquiring the Note, its principal informed Bancorp’s shareholders and directors about the opportunity to purchase the Note, and they declined the opportunity.

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<sup>6</sup> 12 U.S.C. § 1817(j).

<sup>7</sup> A person or persons acting in concert must seek the Board’s approval prior to acquiring control of a state member bank or bank holding company. *See* 12 CFR 225.41(c)(1). The Board considers an acquisition of 25 percent or more of any class of voting securities to be an acquisition of control requiring prior approval, and also presumes that there is an acquisition of control when a person or persons acting in concert acquire 10 percent or more of any class of voting securities of an institution and no other person will own, control, or hold the power to vote a greater percentage of any class of that institution’s voting securities. *See* 12 CFR 225.41(c)(1) and (c)(2)(ii). Based on the evidence in the record, even assuming the various parties identified by the commenter were a group acting in concert in 2011, this group in the aggregate owned less than 25 percent of the voting securities of Bancorp and another shareholder owned a greater percentage of Bancorp’s shares. Thus, the control definition and presumptions would not appear to have been triggered. In light of the evidence in the record and the Board’s rules and presumptions of control, there is insufficient evidence to conclude that the principals of KSRS violated the CIBC Act in 2011.

<sup>8</sup> The commenter also alleged that the auction that KSRS held to sell the Bancorp shares securing the Note was not conducted in a commercially reasonable manner. KSRS represents that it appropriately exercised its rights under the terms of the Note and conducted the auction in accordance with state law. The commenter also claimed that KSRS violated the terms of a shareholder agreement when conducting the auction and that KSRS’s purchase of the Note injured shareholders by preventing the sale of Bancorp to another potential purchaser. These allegations relate to private disputes involving state contract and corporate law and may be adjudicated by a court with competent jurisdiction. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

<sup>9</sup> 12 CFR 225.41(e).

The Board has also considered documents concerning the manner in which KSRS acquired the Note and conducted the auction, disclosures made by KSRS to Bancorp's board of directors and shareholders regarding the Note and the auction, and state law requirements. The Board also considered the regulatory guidance received by KSRS's principals, and commitments made by KSRS to the Board. Further, the Board has considered confidential supervisory information regarding KSRS and Bancorp, its supervisory experiences with the principals of KSRS and their records of compliance with applicable banking and anti-money-laundering laws, as well as KSRS's plan for the acquisition. KSRS has committed to seek advice from appropriate regulatory agencies and third-party banking or professional advisors prior to making any future investments in any other bank or bank holding company stock.

The Board has reviewed the examination records of Bancorp and Citizens Community Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

Bancorp and Citizens Community Bank are both considered to be well managed. Bancorp's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of Bancorp have substantial knowledge of and experience in the banking and financial services sectors. KSRS represents that it has no plans to effect significant changes in management at either Bancorp or Citizens Community Bank.

Based on all the facts and circumstances, the Board concludes that managerial resources are consistent with approval. In addition, KSRS's managerial and operational resources, as well as the supervisory record of Bancorp and Citizens Community Bank, provide a reasonable basis on which to conclude that future prospects are consistent with approval.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved, as well as the records of effectiveness of Bancorp and Citizens Community Bank in combating money-laundering activities, are consistent with approval.

### **Convenience and Needs Considerations**

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").<sup>10</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 their safe and sound operation,<sup>11</sup> and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.<sup>12</sup>

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<sup>10</sup> 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

<sup>11</sup> 12 U.S.C. § 2901(b).

<sup>12</sup> 12 U.S.C. § 2903.

The Board has considered all the facts of record, including reports of examination of the CRA performance of Citizens Community Bank, other information provided by KSRS, and confidential supervisory information.

*A. Records of Performance under the CRA*

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisor of the CRA performance records of that institution.<sup>13</sup> The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.<sup>14</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 of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

Citizens Community Bank was assigned an overall rating of "satisfactory" at its most recent CRA performance evaluation by the FDIC in March 2014.<sup>15</sup>

*CRA Performance of Citizens Community Bank.* Examiners determined that the bank's average quarterly net loan-to-deposit ratio was reasonable given the bank's asset size, financial condition, and assessment area credit needs. In addition, examiners found that a majority of loans sampled were made within the assessment area, illustrating a reasonable commitment to meeting the credit needs of the local community. Examiners also noted that the bank's geographic distribution of lending reflected a reasonable dispersion throughout the assessment area. Further, the bank's lending distribution to borrowers reflected excellent penetration among farm operations of different sizes and individuals of different income levels, as well as reasonable penetration among commercial businesses of different sizes.

*B. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization*

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

KSRS represents that this proposal allows Bancorp and Citizens Community Bank to continue to be locally controlled, and that the acquisition of the Note stabilized ownership of Bancorp. Further, KSRS has no plans to effect significant changes in management at either organization. KSRS believes that such continuity in ownership and management is in the best interests of the communities served by Citizens Community Bank. Further, KSRS represents that Citizens Community Bank has historically received satisfactory ratings during its CRA examinations and that it does not anticipate undertaking any new programs, activities, or products that would undermine its consistently satisfactory ratings.

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<sup>13</sup> See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (2010).

<sup>14</sup> 12 U.S.C. § 2906.

<sup>15</sup> Citizens Community Bank's CRA evaluation was conducted using Small Institution CRA Examination Procedures, and examiners reviewed the bank's lending activity from December 8, 2008, through March 10, 2014.

### *C. Conclusion on Convenience and Needs Considerations*

The Board has considered all the facts of record, including the reports of examination of the CRA record of the institution involved, information provided by KSRS, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of Citizens Community Bank, review of examination reports, consultations with other agencies, and all the facts of record, the Board concludes that the convenience and needs factor, including the CRA record of the insured depository institution involved in this transaction, is consistent with approval of the application.

### **Financial Stability**

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a 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>16</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 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>17</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 to the broader economy.<sup>18</sup>

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Bancorp would have approximately \$106.2 million in consolidated assets and would not be likely to pose systemic risks. The Board generally presumes that a merger or acquisition resulting in a firm with less than \$25 billion in consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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

<sup>16</sup> Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

<sup>17</sup> Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

<sup>18</sup> For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

## Conclusion

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

By order of the Board of Governors, effective March 23, 2015.

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

## Simmons First National Corporation Pine Bluff, Arkansas

### *Order Approving the Merger of Bank Holding Companies FRB Order No. 2015-03 (February 12, 2015)*

Simmons First National Corporation (“Simmons”), Pine Bluff, Arkansas, has requested the Board's approval under section 3 of the Bank Holding Company Act (“BHC Act”)<sup>1</sup> to merge with Community First Bancshares, Inc. (“Community First”), and thereby indirectly acquire its subsidiary bank, First State Bank (“First Bank”), both of Union City, Tennessee.<sup>2</sup> Following the proposed acquisition, First Bank, a state nonmember bank, would be merged into Simmons' subsidiary bank, Simmons First National Bank (“Simmons Bank”), Pine Bluff, Arkansas.<sup>3</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (79 *Federal Register* 43047 (2014)).<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.

Simmons, with consolidated assets of approximately \$4.8 billion, is the 185th largest depository organization in the United States, controlling approximately \$4.0 billion in consolidated deposits.<sup>5</sup> Simmons operates in Arkansas, Kansas, and Missouri.

Community First, with consolidated assets of approximately \$2.0 billion, is the 367th largest depository organization in the United States, controlling approximately \$1.6 billion in consolidated deposits. Community First operates only in Tennessee.

<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> Simmons has also requested the Board's approval to merge with Liberty Bancshares, Inc. (“Liberty”), Springfield, Missouri. See *Liberty Bancshares, Inc.*, FRB Order 2015-04 (February 12, 2015).

<sup>3</sup> The consolidation of First Bank into Simmons 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).

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

<sup>5</sup> Asset and nationwide deposit-ranking data are as of June 30, 2014, and are updated to reflect Simmons' acquisition on September 1, 2014, of Delta Trust and Banking Corporation, formerly headquartered in Little Rock, Arkansas, unless otherwise noted.

On consummation of the current proposals,<sup>6</sup> Simmons would become the 125th largest depository organization in the United States, with consolidated assets of approximately \$7.8 billion, which represent less than 0.1 percent of the total assets of insured depository institutions in the United States. Simmons would control total deposits of approximately \$6.4 billion. In Tennessee,<sup>7</sup> Simmons would become the 13th largest depository organization, controlling deposits of approximately \$1.6 billion, which represent 1.3 percent of the total deposits of insured depository institutions in that state.<sup>8</sup>

### Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank 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>9</sup> Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.<sup>10</sup> In addition, the Board may not approve an interstate acquisition if the bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States, or 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 Simmons is Arkansas and Community First's home state is Tennessee.<sup>12</sup> Simmons is well capitalized and well managed under applicable law and has a satisfactory Community Reinvestment Act ("CRA") rating.<sup>13</sup> Tennessee has no minimum age requirement, and Community First has been in existence for more than five years. On consummation of the proposed transactions, Simmons would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, the combined organization would control approximately 1 percent of the total amount of deposits of insured depository institutions in Community First's home state, Tennessee, and there are no states in which Simmons and Community First have overlapping banking operations. Accordingly, in light of all the facts of record, the Board is not prohibited from approving the proposal under section 3(d) of the BHC Act.

<sup>6</sup> Pro forma data include this request to merge with Community First and Simmons' separate request to merge with Liberty. See *Liberty Bancshares, Inc.*, *infra* note 2.

<sup>7</sup> State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and banks.

<sup>8</sup> Simmons' deposit-rankings in Arkansas, Kansas, and Missouri would remain unchanged. Simmons' separate request to merge with Liberty does not involve any assets or deposits controlled in Tennessee.

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

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

<sup>11</sup> 12 U.S.C. § 1842(d)(2)(A), (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. See 12 U.S.C. § 1841(o)(4)-(7).

<sup>12</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 such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank's home state is the state in which the bank is chartered.

<sup>13</sup> 12 U.S.C. §§ 2901-2908.

### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>14</sup>

Simmons Bank and First Bank do not compete directly in any banking market.<sup>15</sup> Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

### Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors, the Board reviews the financial condition of the organizations involved on both parent-only and consolidated bases, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and 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 the financial and managerial resources and the proposed business plan.

The Board has considered the financial factors of the proposal. Simmons and Simmons Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as an exchange of shares.<sup>16</sup> The asset quality, earnings, and liquidity of Simmons Bank and First Bank are consistent with approval, and Simmons appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Simmons, Community First, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

<sup>14</sup> 12 U.S.C. § 1842(c)(1).

<sup>15</sup> The subsidiary depository institutions of Community First and Liberty also do not compete directly in any banking market. See *Liberty Bancshares, Inc.*, *infra* note 2.

<sup>16</sup> As part of the proposed transaction, each share of Community First common stock would be exchanged for 17.8975 shares of Simmons common stock.

Simmons, Community First, and their subsidiary depository institutions are each considered to be well managed. Simmons' existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of Simmons have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered Simmons' plans for implementing the proposal. Simmons is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal.<sup>17</sup> Simmons would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Simmons' and Community First's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Simmons is proposing to integrate First Bank's existing management and personnel in a manner that augments Simmons' management.<sup>18</sup>

Simmons' supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Simmons and Community First 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 must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the CRA.<sup>19</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 their safe and sound operation,<sup>20</sup> and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.<sup>21</sup>

The Board has considered all the facts of record, including reports of examination of the CRA performance of Simmons Bank and First Bank, data reported by Simmons Bank and First Bank under the Home Mortgage Disclosure Act ("HMDA"),<sup>22</sup> other information provided by Simmons, confidential supervisory information, and the public comment

<sup>17</sup> Simmons plans to operate First Bank as a separate entity until September 2015, at which time Simmons will integrate First Bank into Simmons Bank.

<sup>18</sup> On consummation, Simmons will increase from 9 to 11 the number of seats on its board of directors. Nine directors currently serving on Simmons' board of directors and two directors nominated by Community First's board of directors will serve on the board of the combined organization. On consummation of its separate request to merge with Liberty, Simmons will further increase the number of seats on its board of directors to 12, and the additional director will be nominated by Liberty's board of directors. The chairman and chief executive officer of Simmons will continue to serve in his role following the merger. The current president and chief executive officer of both Community First and First Bank will continue to serve in his role at First Bank following the merger and will become a regional chairman of Simmons.

<sup>19</sup> 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

<sup>20</sup> 12 U.S.C. § 2901(b).

<sup>21</sup> 12 U.S.C. § 2903.

<sup>22</sup> 12 U.S.C. § 2801 *et seq.*

received on the proposal. The Board received one comment that objected to the proposal on the basis of Simmons Bank's fair lending record as reflected in 2012 HMDA data and Simmons Bank's disposition of branches in connection with previous acquisitions.

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

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.<sup>23</sup> The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.<sup>24</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 of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

*CRA Performance of Simmons Bank.* Simmons Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the OCC in January 2013 ("Simmons Bank Evaluation"). Simmons Bank received "low satisfactory" ratings for both the Lending Test and Investment Test and a "high satisfactory" rating for the Service Test.<sup>25</sup> Examiners noted that Simmons Bank had a good level of community development services in the states in which the bank maintained an ongoing presence.<sup>26</sup> The Board has consulted with the OCC regarding the Simmons Bank Evaluation.

Examiners found that the bank's overall lending activity was adequate and reflected adequate responsiveness to its assessment area credit needs. Simmons Bank's distribution of home mortgage loans by geography and to borrowers of different income levels was found to be adequate. In addition, the bank's distribution of small business loans to businesses of different sizes was considered adequate.

In evaluating the bank's performance under the Investment Test, examiners found that Simmons Bank had an overall adequate level of qualified community development investments. Examiners noted that there was an adequate level of qualified investments based on the investment opportunities compared to the dollar volume of investments the bank made in its assessment areas.

With respect to the bank's performance under the Service Test, examiners noted that branch locations were accessible to LMI geographies and individuals of different income levels. Examiners also noted that the institution provided a good level of community development services in the assessment areas in which the bank has maintained an ongoing presence. In addition, examiners found that Simmons Bank's opening and closing of branches had not adversely affected the accessibility of its delivery systems to LMI geographies or LMI individuals.

*CRA Performance of First Bank.* First Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corpora-

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<sup>23</sup> See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

<sup>24</sup> 12 U.S.C. § 2906.

<sup>25</sup> The Simmons Bank Evaluation was conducted using Large Bank CRA evaluation procedures. The evaluation period for data reported under the Home Mortgage Disclosure Act was 2009 through 2011, and for community development loans, investments, services, and retail services was September 30, 2008, through January 2, 2013.

<sup>26</sup> The Simmons Bank Evaluation included full-scope reviews of at least one assessment area within each state in which Simmons Bank had an office. The states reviewed were Arkansas, Kansas, and Missouri.

tion (“FDIC”) in March 2013 (“First Bank Evaluation”). First Bank received a “high satisfactory” rating for each of the Lending Test, Investment Test, and the Service Test.<sup>27</sup>

In evaluating the bank’s performance under the Lending Test, examiners concluded that First Bank’s lending levels reflected good responsiveness to its assessment area’s credit needs. Examiners found that the majority of the bank’s loans were originated in the overall assessment area, and the geographic distribution of its loans was good. Examiners noted that First Bank’s distribution of loans by income reflected good penetration among retail customers of different income levels. Examiners also found First Bank to be a leader in community development loans and that the bank made extensive use of innovative and flexible lending practices to serve the credit needs of its assessment area.

In evaluating the bank’s performance under the Investment Test, examiners found that the bank had a significant level of qualified community development investments and grants in its assessment area. First Bank’s community development activities represented very good responsiveness to community needs. In evaluating the bank’s performance under the Service Test, examiners noted that First Bank’s branch and ATM network did not vary in a way that inconvenienced portions of the assessment area, particularly LMI geographies. The First Bank Evaluation noted that the bank provided a relatively high level of community development services throughout its assessment areas and that the bank was one of only nine banks to participate in the FDIC’s Safe Deposit Accounts Pilot Program.

#### *B. Fair Lending and Other Consumer Protection Laws*

The Board has considered the records of Simmons Bank and First Bank in complying with fair lending and other consumer protection laws. As part of this consideration, the Board reviewed the Simmons Bank and First Bank Evaluations, assessed Simmons Bank’s and First Bank’s HMDA data, and considered the public comment on the application as well as other agencies’ views on Simmons Bank’s record of performance under fair lending laws. The Board also considered Simmons Bank’s fair lending policies and procedures.

*Review of HMDA Data and Branch Closings.* The Board reviewed Simmons Bank’s 2012 and 2013 HMDA data, as well as the bank’s preliminary 2014 HMDA data through July 31, 2014, for the specific market areas addressed in the public comment (Little Rock, Arkansas, and Kansas City, Missouri). Within those markets, the Board focused its review on data related to home purchase, refinancing, and home improvement loans made or denied to borrowers of the races and ethnicities highlighted by the public comment, i.e., African Americans and Hispanics. In addition, the Board reviewed the bank’s record of branch closings that followed previous acquisitions.

*Simmons Bank’s HMDA Data and Branch Closings.* The commenter expressed concerns that, based on 2012 HMDA data, Simmons Bank is not meeting the credit needs of minority individuals in the communities served by the bank. The commenter alleges that there are inaccuracies in Simmons Bank’s data reporting and that the bank is disguising potential violations of provisions of HMDA and the Equal Credit Opportunity Act. In particular, the commenter asserts that Simmons Bank is prescreening minority borrowers, citing the HMDA data in two market areas that for some loan types reflect a small number of denials.

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<sup>27</sup> The First Bank Evaluation was conducted using Large Bank CRA evaluation procedures in First Bank’s assessment areas of Nashville, Jackson, Memphis, Knoxville, and non-metropolitan areas, all in Tennessee. Examiners reviewed data reported by First Bank from September 8, 2009, to March 25, 2013.

The Board is concerned when HMDA data for an institution indicate lending disparities and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether the bank excluded or denied credit to any group on a prohibited basis.<sup>28</sup> Fully evaluating a bank's compliance with fair lending laws and regulations would require a thorough review of the bank's application and underwriting policies and procedures, as well as access to information contained in the application files, to determine whether the observed lending disparities persist after taking into account legitimate underwriting factors.

The Board's review of Simmons Bank's HMDA data confirmed that the bank reported relatively high origination rates in the Little Rock and Kansas City market areas for government-secured mortgage loans for both nonminority and minority applicants.<sup>29</sup> The same HMDA data, however, show ordinary origination and denial rates when including all HMDA product categories. As such, the data are not consistent with evidence of prescreening.

Simmons provided information reflecting nondiscriminatory reasons for individual lending decisions (i.e., credit history, inadequate collateral, and debt-to-income ratio) on home purchase and home improvement loans cited by the commenter. Simmons also provided the Board with detailed information on Simmons Bank's procedures and policies to prevent prescreening.

The Board has consulted with, and placed great emphasis on the views of, the OCC regarding its evaluation of Simmons Bank's compliance with fair lending laws and regulations. The Simmons Bank Evaluation included review of 2012 HMDA data, and, in January 2013, the OCC tested the accuracy of the bank's 2012 HMDA data. In February 2014, the OCC also conducted fair lending and compliance examinations of Simmons Bank. Based on its consultations with the OCC regarding these reviews, the Board concludes that the bank's fair lending management program and its compliance management program are consistent with approval of this proposal.

The commenter also alleges that Simmons has a business strategy of closing branches and reducing financial services, resulting in inconvenience to local communities. The Board analyzed the distribution of Simmons Bank's branches and the 2010 census data within the bank's assessment areas. The Board found that, of the bank's 112 branches, 20.6 percent are located in LMI census tracts. Of the population within Simmons Bank's assessment areas, 29.3 percent are in LMI geographies. As noted above, examiners on site believed that the branch locations of Simmons Bank provided a good level of services in the community and were readily accessible to individuals of different income levels.

Simmons has stated that Simmons Bank does not intend to close any branches in connection with the proposed transaction. Although the bank closed several branches in recent years, the bank has represented that the decisions were based on profitability analysis and

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<sup>28</sup> The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of any applicant's creditworthiness. In addition, the data do not account for the possibility that an institution entered the assessment area shortly before the close of the reporting period, thereby creating an unrepresentative sample.

<sup>29</sup> Government-secured loans are those under programs of the Federal Housing Administration, Farm Service Agency, Rural Housing Service, or Department of Veterans Affairs.

proximity to other branches and that community impact was assessed prior to all closings. Further, the Board has considered that federal banking law provides a specific mechanism for addressing branch closings. Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch.<sup>30</sup> The Board notes that the OCC examiners found that Simmons Bank's opening and closing of branches had not adversely affected accessibility of its services in LMI geographies or to LMI individuals. The OCC will continue to review Simmons Bank's branch closing record in the course of conducting CRA performance evaluations.

*Simmons' Fair Lending Program.* Simmons has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. The company's legal and compliance risk-management program includes written policies outlining the bank's responsibility for compliance with fair lending laws and regulations, provision for fair lending officers to serve within each of the bank's lending departments, and required annual fair lending training for applicable staff and the board of directors. Simmons also has a centralized underwriting procedure, an automated application process, a second review process, a documented exception process, and a standard pricing sheet.

#### *C. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization*

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

Simmons represents that the proposal would provide opportunities to achieve various operational efficiencies and economies of scale, which would benefit current and future customers of the combined organization through more efficient and cost-effective banking services. Simmons asserts that the transaction has the potential to benefit all aspects of Community First's operations, particularly its audit and loan review functions, online banking platform, and ATM systems. Simmons also states that the combined organization's larger lending limit would allow Simmons to better meet the lending needs of its corporate customers and more effectively compete for larger commercial customers.

Simmons states that the proposal would provide customers with an expanded network of over 112 branches in Arkansas, Kansas, and Missouri. Simmons notes that the combined organization would provide First Bank's customers with an expanded and more sophisticated range of products and services than First Bank currently offers, including an enhanced range of consumer services and deposit accounts.

#### *D. Conclusion on Convenience and Needs Considerations*

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Simmons, confidential supervisory information, and the public comment on the proposal. Based on the Board's analysis of the HMDA data, evaluation of the mortgage lending operations and compliance programs of Simmons Bank and First Bank, review of examination reports, consultations with other agencies, and all the facts of record, the Board believes that the conve-

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<sup>30</sup> Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Federal Register* 34844 (1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal supervisory agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

nience and needs factor, including the CRA record of the insured depository institutions involved in this transaction, is consistent with approval of the application.

### Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended section 3 of the BHC Act to require the Board to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system.”<sup>31</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 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>32</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 to the broader economy.<sup>33</sup>

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Simmons would have approximately \$7.8 billion in consolidated assets and would not be likely to pose systemic risks.<sup>34</sup> The Board generally presumes that a merger resulting in a firm with less than \$25 billion in consolidated assets will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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

### Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.<sup>35</sup> In reaching its conclusion, the Board has con-

<sup>31</sup> Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 123 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

<sup>32</sup> Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

<sup>33</sup> For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

<sup>34</sup> Pro forma data include this request to merge with Community First and Simmons’ separate request to merge with Liberty. See *Liberty Bancshares, Inc.*, *infra* note 2.

<sup>35</sup> A commenter requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12CFR

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

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

By order of the Board of Governors, effective February 12, 2015.

Voting for this action: Chair Yellen, Governors Tarullo, Powell, and Brainard. Absent and not voting: Vice Chairman Fischer.

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

## Simmons First National Corporation Pine Bluff, Arkansas

### *Order Approving the Merger of Bank Holding Companies FRB Order No. 2015-04 (February 12, 2015)*

Simmons First National Corporation ("Simmons"), Pine Bluff, Arkansas, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")<sup>1</sup> to merge with Liberty Bancshares, Inc. ("Liberty"), and thereby indirectly acquire its subsidiary bank, Liberty Bank, both of Springfield, Missouri.<sup>2</sup> Following the proposed acquisition, Liberty Bank, a state nonmember bank, would be merged into Simmons' subsidiary bank, Simmons First National Bank ("Simmons Bank"), Pine Bluff, Arkansas.<sup>3</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (79 *Federal Register* 42793 (2014)).<sup>4</sup> The time for submitting comments

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

<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> Simmons has also requested the Board's approval to merge with Community First Bancshares, Inc. ("Community First"), Union City, Tennessee. See *Community First Bancshares, Inc.*, FRB Order 2015-03 (February 12, 2015).

<sup>3</sup> The consolidation of Liberty Bank into Simmons 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).

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

has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Simmons, with consolidated assets of approximately \$4.8 billion, is the 185th largest depository organization in the United States, controlling approximately \$4.0 billion in consolidated deposits.<sup>5</sup> Simmons operates in Arkansas, Kansas, and Missouri. Simmons is the 106th largest depository organization in Missouri, controlling deposits of approximately \$207.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.<sup>6</sup>

Liberty, with consolidated assets of approximately \$1.1 billion, is the 630th largest depository organization in the United States, controlling approximately \$881.2 million in consolidated deposits. Liberty operates only in Missouri. Liberty is the 22nd largest depository organization in Missouri, controlling less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the current proposals,<sup>7</sup> Simmons would become the 125th largest depository organization in the United States, with consolidated assets of approximately \$7.8 billion, which represent less than 0.1 percent of the total assets of insured depository institutions in the United States. Simmons would control total deposits of approximately \$6.4 billion. In Missouri, Simmons would become the 20th largest depository organization, controlling deposits of approximately \$1.1 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.<sup>8</sup>

### Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank 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>9</sup> Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.<sup>10</sup> In addition, the Board may not approve an interstate acquisition if the bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States, or 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>

<sup>5</sup> Asset and nationwide deposit-ranking data are as of June 30, 2014, and are updated to reflect Simmons' acquisition on September 1, 2014, of Delta Trust and Banking Corporation, formerly headquartered in Little Rock, Arkansas, unless otherwise noted.

<sup>6</sup> State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and banks.

<sup>7</sup> Pro forma data include this request to merge with Liberty and Simmons' separate request to merge with Community First. See *Community First Bancshares, Inc.*, *infra* note 2.

<sup>8</sup> Simmons' deposit-rankings in Arkansas and Kansas would remain unchanged. Simmons' separate request to merge with Community First does not involve any assets or deposits controlled in Missouri.

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

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

<sup>11</sup> 12 U.S.C. § 1842(d)(2)(A), (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. See 12 U.S.C. § 1841(o)(4)–(7).

For purposes of the BHC Act, the home state of Simmons is Arkansas and Liberty's home state is Missouri.<sup>12</sup> Simmons is well capitalized and well managed under applicable law and has a satisfactory Community Reinvestment Act ("CRA") rating.<sup>13</sup> Missouri has no minimum age requirement, and Liberty has been in existence for more than five years. On consummation of the proposed transactions, Simmons would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, the combined organization would control less than 1 percent of the total amount of deposits of insured depository institutions in Liberty's home state, Missouri, the only state in which Simmons and Liberty have overlapping banking operations. Accordingly, in light of all the facts of record, the Board is not prohibited 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 any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>14</sup>

Simmons Bank and Liberty Bank compete directly only in the Springfield, Missouri, banking market (the "Springfield banking market").<sup>15</sup> The Board has considered the competitive effects of this proposal on the Springfield banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative shares of total deposits in insured depository institutions in the market ("market deposits") controlled by Simmons and Liberty;<sup>16</sup> the concentration levels of market deposits and the increase in those levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");<sup>17</sup> and other characteristics of the markets.

<sup>12</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 such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank's home state is the state in which the bank is chartered.

<sup>13</sup> 12 U.S.C. §§ 2901–2908.

<sup>14</sup> 12 U.S.C. § 1842(c)(1).

<sup>15</sup> The Springfield banking market is defined as the counties of Christian, Dade, Dallas, Greene, Polk, Webster, and the northern half of Lawrence (including the townships of Red Oak, Green, Lincoln, Ozark, Turnback, Mount Vernon, and Vineyard, and the city of Mount Vernon) in Missouri. The subsidiary depository institutions of Liberty and Community First do not compete directly in any banking market. See *Community First Bancshares, Inc.*, *infra* note 2.

<sup>16</sup> Deposit and market share data are as of June 30, 2014, 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>17</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

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Springfield banking market. On consummation, the Springfield banking market would remain unconcentrated as measured by the HHI, and numerous competitors would remain.<sup>18</sup>

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

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

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

In evaluating financial factors, the Board reviews the financial condition of the organizations involved on both parent-only and consolidated bases, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and 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 the financial and managerial resources and the proposed business plan.

The Board has considered the financial factors of the proposal. Simmons and Simmons Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as an exchange of shares.<sup>19</sup> The asset quality, earnings, and liquidity of Simmons Bank and Liberty Bank are consistent with approval, and Simmons appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Simmons, Liberty, and their subsidiary depository institutions, including assessments of

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in 2010 (*see* Press Release, Department of Justice (August 19, 2010), [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html)), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified.

<sup>18</sup> Simmons Bank is the 39th largest depository institution in the Springfield banking market, controlling approximately \$8.1 million in deposits, which represent less than 1 percent of market deposits. Liberty Bank is the fourth largest depository institution in the market, controlling approximately \$586.3 million in deposits, which represent 6.88 percent of market deposits. On consummation of the proposed transaction, Simmons Bank would become the fourth largest depository institution in the market, controlling approximately \$594.5 million in deposits, which represent 6.98 percent of market deposits. The HHI would increase by one point to 694, and 39 competitors would remain in the market.

<sup>19</sup> As part of the proposed transaction, each share of Liberty common stock would be exchanged for one share of Simmons common stock.

their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

Simmons, Liberty, and their subsidiary depository institutions are each considered to be well managed. Simmons' existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of Simmons have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered Simmons' plans for implementing the proposal. Simmons is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal.<sup>20</sup> Simmons would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Simmons' and Liberty's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Simmons is proposing to integrate Liberty Bank's existing management and personnel in a manner that augments Simmons' management.<sup>21</sup>

Simmons' supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Simmons and Liberty 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 must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the CRA.<sup>22</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 their safe and sound operation,<sup>23</sup> and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.<sup>24</sup>

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<sup>20</sup> Simmons plans to operate Liberty Bank as a separate entity until April 2015, at which time Simmons will integrate Liberty Bank into Simmons Bank.

<sup>21</sup> On consummation, Simmons will increase from 9 to 10 the number of seats on its board of directors. Nine directors currently serving on Simmons' board of directors, and one director nominated by Liberty's board of directors will serve on the board of the combined organization. On consummation of its separate request to merge with Community First, Simmons will further increase the number of seats on its board of directors to 12, and the two additional directors will be nominated by Community First's board of directors. The chairman and chief executive officer of Simmons will continue to serve in his role following the merger. The current chairman and chief executive officer of both Liberty and Liberty Bank will continue to serve in his role at Liberty Bank following the merger and will become a regional chairman of Simmons.

<sup>22</sup> 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

<sup>23</sup> 12 U.S.C. § 2901(b).

<sup>24</sup> 12 U.S.C. § 2903.

The Board has considered all the facts of record, including reports of examination of the CRA performance of Simmons Bank and Liberty Bank, data reported by Simmons Bank and Liberty Bank under the Home Mortgage Disclosure Act (“HMDA”),<sup>25</sup> other information provided by Simmons, confidential supervisory information, and the public comment received on the proposal. The Board received one comment that objected to the proposal on the basis of Simmons Bank’s fair lending record as reflected in 2012 HMDA data and Simmons Bank’s disposition of branches in connection with previous acquisitions.

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

As provided in the CRA, the Board evaluates an institution’s performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.<sup>26</sup> The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution’s record of meeting the credit needs of its entire community, including LMI neighborhoods.<sup>27</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 of the institution’s overall record of performance under the CRA by its appropriate federal supervisor.

*CRA Performance of Simmons Bank.* Simmons Bank was assigned an overall “satisfactory” rating at its most recent CRA performance evaluation by the OCC in January 2013 (“Simmons Bank Evaluation”). Simmons Bank received “low satisfactory” ratings for both the Lending Test and Investment Test and a “high satisfactory” rating for the Service Test.<sup>28</sup> Examiners noted that Simmons Bank had a good level of community development services in the states in which the bank maintained an ongoing presence.<sup>29</sup> The Board has consulted with the OCC regarding the Simmons Bank Evaluation.

Examiners found that the bank’s overall lending activity was adequate and reflected adequate responsiveness to its assessment area credit needs. Simmons Bank’s distribution of home mortgage loans by geography and to borrowers of different income levels was found to be adequate. In addition, the bank’s distribution of small business loans to businesses of different sizes was considered adequate.

In evaluating the bank’s performance under the Investment Test, examiners found that Simmons Bank had an overall adequate level of qualified community development investments. Examiners noted that there was an adequate level of qualified investments based on the investment opportunities compared to the dollar volume of investments the bank made in its assessment areas.

With respect to the bank’s performance under the Service Test, examiners noted that branch locations were accessible to LMI geographies and individuals of different income levels. Examiners also noted that the institution provided a good level of community development services in the assessment areas in which the bank has maintained an ongoing presence. In addition, examiners found that Simmons Bank’s opening and closing of branches

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12 U.S.C. § 2801 *et seq.*

<sup>26</sup> See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

<sup>27</sup> 12 U.S.C. § 2906.

<sup>28</sup> The Simmons Bank Evaluation was conducted using Large Bank CRA evaluation procedures. The evaluation period for data reported under the Home Mortgage Disclosure Act was 2009 through 2011, and for community development loans, investments, services, and retail services was September 30, 2008, through January 2, 2013.

<sup>29</sup> The Simmons Bank Evaluation included full-scope reviews of at least one assessment area within each state in which Simmons Bank had an office. The states reviewed were Arkansas, Kansas, and Missouri.

had not adversely affected the accessibility of its delivery systems to LMI geographies or LMI individuals.

*CRA Performance of Liberty Bank.* Liberty Bank was assigned an overall “satisfactory” rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation in November 2013 (“Liberty Bank Evaluation”). Liberty Bank received a “satisfactory” rating for the Lending Test and an “outstanding” rating for the Community Development Test.<sup>30</sup>

With respect to the bank’s performance under the Community Development Test, examiners determined that Liberty Bank demonstrated excellent responsiveness to the community development needs in the assessment areas. Examiners noted that Liberty Bank employees or officers had devoted time and lent technical expertise to an adequate number of community development services.

#### *B. Fair Lending and Other Consumer Protection Laws*

The Board has considered the records of Simmons Bank and Liberty Bank in complying with fair lending and other consumer protection laws. As part of this consideration, the Board reviewed the Simmons Bank and Liberty Bank Evaluations, assessed Simmons Bank’s HMDA data, and considered the public comment on the application as well as other agencies’ views on Simmons Bank’s record of performance under fair lending laws. The Board also considered Simmons Bank’s fair lending policies and procedures.

*Review of HMDA Data and Branch Closings.* The Board reviewed Simmons Bank’s 2012 and 2013 HMDA data, as well as the bank’s preliminary 2014 HMDA data through July 31, 2014, for the specific market areas addressed in the public comment (Little Rock, Arkansas, and Kansas City, Missouri). Within those markets, the Board focused its review on data related to home purchase, refinancing, and home improvement loans made or denied to borrowers of the races and ethnicities highlighted by the public comment, i.e., African Americans and Hispanics. In addition, the Board reviewed the bank’s record of branch closings that followed previous acquisitions.

*Simmons Bank’s HMDA Data and Branch Closings.* The commenter expressed concerns that, based on 2012 HMDA data, Simmons Bank is not meeting the credit needs of minority individuals in the communities served by the bank. The commenter alleges that there are inaccuracies in Simmons Bank’s data reporting and that the bank is disguising potential violations of provisions of HMDA and the Equal Credit Opportunity Act. In particular, the commenter asserts that Simmons Bank is prescreening minority borrowers, citing the HMDA data in two market areas that for some loan types reflect a small number of denials.

The Board is concerned when HMDA data for an institution indicate lending disparities and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether the bank

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<sup>30</sup> The Liberty Bank evaluation was conducted using the Intermediate Small Bank evaluation procedures, and examiners reviewed the bank’s small business and residential lending activity from September 13, 2010, to November 4, 2013. These products were selected for analysis because they represented 79 percent of the bank’s loan portfolio.

excluded or denied credit to any group on a prohibited basis.<sup>31</sup> Fully evaluating a bank's compliance with fair lending laws and regulations would require a thorough review of the bank's application and underwriting policies and procedures, as well as access to information contained in the application files, to determine whether the observed lending disparities persist after taking into account legitimate underwriting factors.

The Board's review of Simmons Bank's HMDA data confirmed that the bank reported relatively high origination rates in the Little Rock and Kansas City market areas for government-secured mortgage loans for both nonminority and minority applicants.<sup>32</sup> The same HMDA data, however, show ordinary origination and denial rates when including all HMDA product categories. As such, the data are not consistent with evidence of prescreening.

Simmons provided information reflecting nondiscriminatory reasons for individual lending decisions (i.e., credit history, inadequate collateral, and debt-to-income ratio) on home purchase and home improvement loans cited by the commenter. Simmons also provided the Board with detailed information on Simmons Bank's procedures and policies to prevent prescreening.

The Board has consulted with, and placed great emphasis on the views of, the OCC regarding its evaluation of Simmons Bank's compliance with fair lending laws and regulations. The Simmons Bank Evaluation included review of 2012 HMDA data and, in January 2013, the OCC tested the accuracy of the bank's 2012 HMDA data. In February 2014, the OCC also conducted fair lending and compliance examinations of Simmons Bank. Based on consultations with the OCC regarding these reviews, the Board concludes that the bank's fair lending management program and the compliance management program are consistent with approval of this proposal.

The commenter also alleges that Simmons has a business strategy of closing branches and reducing financial services, resulting in inconvenience to local communities. The Board analyzed the distribution of Simmons Bank's branches and the 2010 census data within the bank's assessment areas. The Board found that, of the bank's 112 branches, 20.6 percent are located in LMI census tracts. Of the population within Simmons Bank's assessment areas, 29.3 percent are in LMI geographies. As noted above, examiners on site believed that the branch locations of Simmons Bank provided a good level of services in the community and were readily accessible to individuals of different income levels.

Simmons has stated that Simmons Bank does not intend to close any branches in connection with the proposed transaction. Although the bank closed several branches in recent years, the bank has represented that the decisions were based on profitability analysis and proximity to other branches and that community impact was assessed prior to all closings. Further, the Board has considered that federal banking law provides a specific mechanism for addressing branch closings. Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch.<sup>33</sup> The Board notes that the OCC examiners found that the Simmons Bank's

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<sup>31</sup> The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of any applicant's creditworthiness. In addition, the data do not account for the possibility that an institution entered the assessment area shortly before the close of the reporting period, thereby creating an unrepresentative sample.

<sup>32</sup> Government-secured loans are those under programs of the Federal Housing Administration, Farm Service Agency, Rural Housing Service, or Department of Veterans Affairs.

<sup>33</sup> Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Federal Register* 34844 (1999)), requires that a bank provide the pub-

opening and closing of branches had not adversely affected accessibility of its services in LMI geographies or to LMI individuals. The OCC will continue to review Simmons Bank's branch closing record in the course of conducting CRA performance evaluations.

*Simmons' Fair Lending Program.* Simmons has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. The company's legal and compliance risk-management program includes written policies outlining the bank's responsibility for compliance with fair lending laws and regulations, provision for fair lending officers to serve within each of the bank's lending departments, and required annual fair lending training for applicable staff and the board of directors. Simmons also has a centralized underwriting procedure, an automated application process, a second review process, a documented exception process, and a standard pricing sheet.

#### *C. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization*

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

Simmons represents that the proposal would provide opportunities to achieve various operational efficiencies and economies of scale, which would benefit current and future customers of the combined organization through more efficient and cost-effective banking services. Simmons asserts that the transaction has the potential to benefit all aspects of Liberty's operations, particularly its audit and loan review functions, online banking platform, and ATM systems. Simmons also states that the combined organization's larger lending limit would allow Simmons to better meet the lending needs of its corporate customers and more effectively compete for larger commercial customers.

Simmons states that the proposal would provide customers with an expanded network of over 112 branches in Arkansas, Kansas, and Missouri. Simmons notes that the combined organization would provide Liberty Bank's customers with an expanded and more sophisticated range of products and services than Liberty Bank currently offers, including an enhanced range of consumer services and deposit accounts.

#### *D. Conclusion on Convenience and Needs Considerations*

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Simmons, confidential supervisory information, and the public comment on the proposal. Based on the Board's analysis of the HMDA data, evaluation of the mortgage lending operations and compliance programs of Simmons Bank and Liberty Bank, review of examination reports, consultations with other agencies, and all the facts of record, the Board believes that the convenience and needs factor, including the CRA record of the insured depository institutions involved in this transaction, is consistent with approval of the application.

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lic with at least 30 days' notice, and the appropriate federal supervisory agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

## Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended section 3 of the BHC Act to require the Board to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system.”<sup>34</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 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>35</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 to the broader economy.<sup>36</sup>

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Simmons would have approximately \$7.8 billion in consolidated assets and would not be likely to pose systemic risks.<sup>37</sup> The Board generally presumes that a merger resulting in a firm with less than \$25 billion in consolidated assets will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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

## Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.<sup>38</sup> In reaching its conclusion, the Board has con-

<sup>34</sup> Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 123 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

<sup>35</sup> Many of the metrics considered by Board measure an institution’s activities relative to the U.S. financial system.

<sup>36</sup> For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

<sup>37</sup> Pro forma data include this request to merge with Liberty and Simmons’ separate request to merge with Community First. See *Community First Bancshares, Inc.*, *infra* note 2.

<sup>38</sup> A commenter requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the commenter’s request in light of all the facts of record. In the Board’s

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

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

By order of the Board of Governors, effective February 12, 2015.

Voting for this action: Chair Yellen, Governors Tarullo, Powell, and Brainard. Absent and not voting: Vice Chairman Fischer.

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

Sumitomo Mitsui Financial Group, Inc.  
Tokyo, Japan

Sumitomo Mitsui Banking Corporation  
Tokyo, Japan

*Order Approving Acquisition of Shares of a Bank Holding Company*  
*FRB Order No. 2015-07 (February 20, 2015)*

Sumitomo Mitsui Financial Group, Inc. ("SMFG"), and Sumitomo Mitsui Banking Corporation ("SMBC"), both of Tokyo, Japan (collectively, "Applicants"), foreign banking organizations that are financial holding companies under the Bank Holding Company Act of 1956, as amended ("BHC Act"),<sup>1</sup> have requested the Board's approval under section 3(a) of the BHC Act to increase their ownership interest from 9.7 percent to 19.9 percent of the voting shares of The Bank of East Asia, Limited ("BEA"), Hong Kong SAR, People's Republic of China, a foreign banking organization that is a bank holding company under the BHC Act by virtue of its ownership interest in Industrial and Commercial Bank of China (USA), National Association ("ICBC-USA"), New York, New York.<sup>2</sup>

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view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> 12 CFR 225.11(c)(1). BEA and its subsidiary, East Asia Holding Company, Inc., New York, New York, are bank holding companies by virtue of their ownership of 20 percent of the voting shares of ICBC-USA and, thus, subject to the BHC Act. Prior to July 2012, ICBC-USA was a wholly owned subsidiary of BEA and was named The Bank of East Asia (USA), National Association ("BEA-USA"). In 2012, with the Board's prior approval, BEA sold an 80 percent interest in the voting shares of BEA-USA (now ICBC-USA) to the Industrial and Commercial Bank of China Limited, Beijing, People's Republic of China. See *Industrial and Commercial Bank of China Limited*, FRB Order No. 2012-4 (May 9, 2012). BEA also is subject to the BHC Act because

Notice of the proposal affording interested persons an opportunity to submit comments has been published (79 *Federal Register* 61308 (October 10, 2014)). 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.

SMFG, with total assets of approximately \$1.6 trillion, is the third largest banking organization in Japan.<sup>3</sup> SMFG, through its subsidiaries, including SMBC, engages in a broad range of banking and financial services throughout Japan, Asia, the United Kingdom, and North and South America. Outside Japan, SMFG owns subsidiary banks in the United Kingdom, Brazil, Canada, the People's Republic of China, Indonesia, Russia, and Malaysia, and SMBC operates branches in more than a dozen additional countries.

In the United States, Applicants own Manufacturers Bank, Los Angeles, California, with consolidated assets of \$2.4 billion and deposits of approximately \$1.9 billion.<sup>4</sup> Manufacturers Bank engages in retail and commercial banking in the United States through 10 branches in California. SMBC operates uninsured state branches in New York City, Los Angeles, and San Francisco and representative offices in Houston and Jersey City. Applicants also maintain nonbanking subsidiaries in the United States.<sup>5</sup> SMFG and SMBC are each qualifying foreign banking organizations and, upon consummation of the proposal, would continue to meet the requirements for a qualifying foreign banking organization under Regulation K.<sup>6</sup>

BEA, with total consolidated assets of approximately \$100.8 billion, is the fifth largest bank in Hong Kong. BEA engages primarily in retail and commercial banking, wealth management, and insurance services in the People's Republic of China, North America, the United Kingdom, and Southeast Asia. In the United States, BEA operates an FDIC-insured federal branch in New York City ("BEA-NY") and uninsured federal branches in New York City and Los Angeles. As noted above, BEA also owns 20 percent of the voting shares of ICBC-USA. ICBC-USA, with consolidated assets of approximately \$1.1 billion and deposits of approximately \$910 million, engages in retail and commercial banking in the United States and operates 13 branches in New York and California.

### Noncontrolling Investment

Applicants currently own approximately 9.7 percent of the voting shares of BEA and propose to increase their ownership interest to 19.9 percent of voting shares. Applicants have stated that they do not propose to control or exercise a controlling influence over BEA as a result of the proposal.<sup>7</sup>

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it operates branches in the United States. 12 U.S.C. § 3106(a). On October 31, 2012, the Board approved an application from the Applicants to increase their interest in BEA from 4.7 percent to up to 9.9 percent. *See Sumitomo Mitsui Financial Group, Inc.*, FRB Order No. 2012-11 (Oct. 31, 2012) ("Sumitomo Order").

<sup>3</sup> Asset and ranking data are as of September 30, 2014, and are based on the exchange rate as of that date, unless otherwise noted. No shareholder owns 5 percent or more of the outstanding shares of SMFG.

<sup>4</sup> Asset and deposit data are as of September 30, 2014.

<sup>5</sup> These nonbanking subsidiaries include SMBC Capital Markets, Inc.; SMBC Leasing and Finance, Inc.; SMBC Nikko Securities America, Inc.; and JRI America, Inc., all of New York, New York.

<sup>6</sup> 12 CFR 211.23(a).

<sup>7</sup> The Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank or bank holding company. *See, e.g., Sumitomo Order; Mitsubishi UFG Financial Group, Inc.*, 95 *Federal Reserve Bulletin* B34 (2009) (acquisition of up to 24.9 percent of the voting shares of a bank holding company); *Brookline Bancorp, MHC*, 86 *Federal Reserve Bulletin* 52 (2000) (acquisition of up to 9.9 percent of the voting shares of a bank holding company); *Mansura Bancshares, Inc.*, 79 *Federal Reserve Bulletin* 37 (1993) (acquisition of 9.7 percent of the voting shares of a bank holding company).

The Board received a comment objecting to the proposal on the grounds that a group of BEA shareholders, including Applicants, may be acting in concert in relation to their investments in BEA and may have control over BEA for purposes of section 3 of the BHC Act. The Board has considered the commenter's allegations in light of all the facts of record and has reviewed information provided by both the commenter and Applicants, as well as confidential supervisory information, including information provided by Applicants' home country supervisor, the Japanese Financial Services Agency ("JFSA").

In particular, Applicants have agreed to abide by certain commitments substantially similar to those on which the Board has previously relied in determining that an investing company would not be able to exercise a controlling influence over another bank holding company or bank for purposes of the BHC Act ("Passivity Commitments"). For example, Applicants have committed not to exercise or attempt to exercise a controlling influence over the management or policies of BEA, not to seek or accept more than one representative on the board of directors of BEA, and not to have any other director or executive officer interlocks with BEA or its subsidiaries.

In addition, Applicants have committed not to enter into any agreement with BEA or any of its subsidiaries that substantially limits the discretion of BEA's management over major policies and decisions; not to solicit or participate in soliciting proxies with respect to any matter that has been presented to the shareholders of BEA or its subsidiaries; and not to dispose or threaten to dispose of equity interests of BEA or any of its subsidiaries in any manner as a condition, or inducement, of specific action or non-action on the part of BEA or any of its subsidiaries. The Passivity Commitments also contain certain restrictions on the permissible business relationships between Applicants and BEA.

Upon consummation of the proposal, SMBC would not be authorized to own, control, or have the power to vote 25 percent or more of any class of voting securities of BEA, or to control in any manner the election of a majority of the directors of BEA. Applicants have represented that they have provided all existing or proposed agreements regarding the proposed investment to the Board and have confirmed that they made their decision to invest in BEA independent of any other BEA shareholder. The terms of the investment agreement between SMBC and BEA are consistent with the requirements of the Board's Policy Statement on Equity Investments in Banks and Bank Holding Companies for noncontrolling investments. In addition, Applicants have represented that they have no agreements with other investors in BEA.

The Board has also considered the restrictions imposed by the laws of Hong Kong and the People's Republic of China on the authority of Applicants to control BEA and the structure of ownership of BEA by other shareholders, including the founding members of BEA. The Board has consulted with the supervisory authorities in Hong Kong and Japan on these matters.

Based on these considerations and all the facts of record, the Board has concluded that the structure of the proposed transaction would not constitute control or the exercise of a controlling influence over BEA or any of its subsidiaries. The Board notes that the BHC Act requires Applicants to receive the Board's approval before directly or indirectly acquiring additional shares of BEA or attempting to exercise a controlling influence over BEA or any of its subsidiaries.<sup>8</sup>

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<sup>8</sup> 12 U.S.C. § 1842. See, e.g., *Emigrant Bancorp, Inc.*, 82 *Federal Reserve Bulletin* 555 (1996) ("Emigrant Bancorp Order").

## Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal clearly are 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>9</sup>

The Board previously has stated that one company need not acquire control of another company to lessen competition between them substantially.<sup>10</sup> Noncontrolling interests in directly competing depository institutions may raise competitive issues under the BHC Act, and the specific facts of each case will determine whether a minority investment in a company would be anticompetitive.<sup>11</sup>

Because the subsidiary banks of Applicants and BEA compete directly in the Los Angeles and San Francisco-Oakland-San Jose banking markets,<sup>12</sup> the Board has reviewed the competitive effects of the proposal in these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits held by insured depository institutions that Applicants would control in the markets (“market deposits”),<sup>13</sup> the concentration levels of market deposits and the increase in those levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Guidelines”), and other characteristics of the markets.<sup>14</sup>

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the relevant banking markets. On consummation, the Los Angeles banking market would remain unconcentrated and the San Francisco-Oak-

<sup>9</sup> 12 U.S.C. § 1842(c)(1). See, e.g., *Emigrant Bancorp* Order.

<sup>10</sup> See e.g., *Sun Trust Banks, Inc.*, 76 *Federal Reserve Bulletin* 542 (1990).

<sup>11</sup> See e.g., *BOK Financial Corp.*, 81 *Federal Reserve Bulletin* 1052, 1053-54 (1995).

<sup>12</sup> The Los Angeles banking market is defined as the Los Angeles Ranally Metropolitan Area (“RMA”) and the cities of Acton in Los Angeles County and Rosamond in Kern County. The San Francisco-Oakland-San Jose banking market is defined as the San Francisco-Oakland-San Jose RMA and the cities of Byron in Contra Costa County, Hollister and San Juan Bautista in San Bonito County, Pescadero in San Mateo County, and Point Reyes Station in Marsh County. Applicants do not currently compete with BEA in any other relevant banking market. BEA operates an insured branch in New York, and ICBC-USA operates in New York. SMBC’s New York branch is not insured by the Federal Deposit Insurance Corporation and generally cannot accept retail deposits. Moreover, neither banking organization controls a significant share of the New York banking market.

<sup>13</sup> Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits data as of June 30, 2013, and have been updated to reflect industry mergers and acquisitions as of September 18, 2014. The data are also based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group, Inc.*, 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>14</sup> Under the DOJ 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 guidelines for bank mergers or acquisitions, which were issued in 1995, were not changed. Press Release, Department of Justice (August 19, 2010), available at [www.justice.gov/opa/pr/departments-justice-and-federal-trade-commission-issue-revised-horizontal-merger-guidelines](http://www.justice.gov/opa/pr/departments-justice-and-federal-trade-commission-issue-revised-horizontal-merger-guidelines).

land-San Jose banking market would remain highly concentrated, as measured by the HHI.<sup>15</sup> Numerous competitors would remain in both banking markets.

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 application.

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 banking resources in any relevant banking market and that competitive factors are consistent with approval of the proposal.

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

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources (including consideration of the competence, experience, and integrity of officers, directors, and principal shareholders) and future prospects of the companies and depository institutions involved in the proposal, as well as the effectiveness of these companies in combatting money-laundering activities.<sup>16</sup> Section 3 of the BHC Act also requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates as the Board deems appropriate to determine and enforce compliance with the BHC Act.<sup>17</sup>

The review was conducted in light of all the facts of record, including confidential supervisory and examination information from the various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, consultation with the JFSA, and information provided by Applicants and by public commenters.

In evaluating financial factors, the Board reviews the financial condition of the organizations involved. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board also evaluates the effect of the transaction on the financial condition of the applicants, including their capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. In assessing financial factors, the Board considers capital adequacy to be especially important.

The capital levels of Applicants exceed the minimum levels that would be required under the Basel Capital Accord and are considered to be equivalent to the capital levels that would be required of a U.S. banking organization seeking to acquire up to 19.9 percent of BEA.<sup>18</sup> Applicants' reported earnings performance, liquidity, and asset quality indicators,

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<sup>15</sup> As of June 30, 2014, the HHI would remain at 973 in the Los Angeles banking market, which has 132 insured depository institution competitors. The HHI would remain at 2030 in the San Francisco-Oakland-San Jose banking market, which has 85 insured depository institution competitors. The combined deposits of the institutions involved in the proposal in each of the Los Angeles and San Francisco-Oakland-San Jose banking markets represent less than 1 percent of market deposits.

<sup>16</sup> The Board has analyzed the effectiveness of Applicants' anti-money-laundering efforts in connection with the Board's assessment of whether Applicants are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.

<sup>17</sup> 12 U.S.C. § 1842(c)(3)(A).

<sup>18</sup> The Board has considered the total, and the tier 1 risk-based capital ratios, and the ratios of tier 1 capital to total consolidated assets of SMFG and SMBC.

including nonperforming loans and reserves for loan losses, are consistent with approval of the proposal. Applicants' U.S. bank subsidiary, Manufacturers Bank, and ICBC-USA are each well capitalized and would remain so on consummation of the proposal.

The proposed transaction is structured as a cash purchase of shares. SMBC would acquire and hold the shares directly and would use existing resources to fund the proposed purchase. In light of the relative size of Applicants to the size of the investment in BEA, the transaction would have a minimal impact on the financial condition of Applicants. Based on its review of the record, the Board concludes that Applicants have sufficient financial resources to effect the proposal.

The Board has also considered the managerial resources of the organizations involved. The Board has reviewed the examination records of Applicants' and BEA's U.S. operations, including assessments of their management, risk-management systems, and operations. The Board also has considered its supervisory experiences and those of the other relevant bank supervisory agencies with the organizations, including consultations in connection with this proposal, and the organizations' records of compliance with applicable banking and anti-money-laundering laws. As noted, the Board also has consulted with the JFSA. In addition, the Board has considered the future prospects of Applicants, BEA, Manufacturers Bank, and ICBC-USA in light of the financial and managerial resources of the organizations.

The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which Applicants operate and has communicated with relevant government authorities concerning access to information. In addition, Applicants have committed that, to the extent not prohibited by applicable law, they will make available to the Board such information on their operations and the operations of their affiliates as the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act, and other applicable federal laws. Applicants also have committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable them or their affiliates to make such information available to the Board.

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

### **Supervision or Regulation on a Consolidated Basis**

In evaluating this application and as required by section 3 of the BHC Act, the Board has considered whether Applicants are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.<sup>19</sup>

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<sup>19</sup> 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign bank is subject to consolidated home country supervision under standards set forth in Regulation K. *See* 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard under section 211.24 of Regulation K, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regulation examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the bank's financial

The Board previously has determined that SMFG and SMBC are subject to comprehensive supervision on a consolidated basis by their home country supervisor.<sup>20</sup> The Applicants continue to be supervised by the JFSA on substantially the same terms and conditions. Based on this finding and all the facts of record, the Board has concluded that SMBC and SMFG continue to be subject to comprehensive supervision on a consolidated basis by their home country supervisor.

The Board has considered the effectiveness of Applicants' anti-money-laundering policies and procedures as well as the Board's supervisory experiences and those of other relevant banking supervisory organizations with Applicants' compliance record. On the basis of all facts of record, the Board has determined that Applicants' anti-money-laundering measures are consistent with approval.

### **Convenience and Needs Considerations**

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").<sup>21</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 their safe and sound operation,<sup>22</sup> and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.<sup>23</sup>

The Board has considered all the facts of record, including reports of examination of the CRA performance of Manufacturers Bank, BEA-NY, and ICBC-USA; information provided by Applicants; and confidential supervisory information.

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

As provided in the CRA, the Board evaluates an institution's performance based on the CRA evaluation completed by that institution's primary regulator.<sup>24</sup> The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.<sup>25</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 of the institution's overall record of performance under the CRA by its appropriate federal supervisor.<sup>26</sup>

*CRA Performance of Manufacturers Bank.* Manufacturers Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal

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condition on a worldwide consolidated basis; (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

<sup>20</sup> See, e.g., *Sumitomo Order; The Wakashio Bank, Limited*, 89 *Federal Reserve Bulletin* 217 (2003).

<sup>21</sup> 12 U.S.C. § 2901 *et seq.*; 12 U.S.C. § 1842(c)(2).

<sup>22</sup> 12 U.S.C. § 2901(b).

<sup>23</sup> 12 U.S.C. § 2903.

<sup>24</sup> See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (March 11, 2010) ("Interagency Questions and Answers").

<sup>25</sup> 12 U.S.C. § 2906.

<sup>26</sup> See *Interagency Questions and Answers*.

Deposit Insurance Corporation (“FDIC”) in February 2014 (“Manufacturers Bank Evaluation”).<sup>27</sup> Manufacturers Bank received a “low satisfactory” rating for the Lending Test and “high satisfactory” ratings for both the Investment Test and the Service Test.

In evaluating the Lending Test, examiners noted that the bank adequately responded to the credit needs of its assessment areas. Examiners found that the bank was a leader in making community development loans and that the geographic distribution of loans provided by the bank reflected adequate penetration throughout the assessment areas.

In evaluating the Investment Test, examiners found that the qualified investments held by the bank exhibited good responsiveness to credit and community economic development needs in its assessment areas. Examiners noted that the total amount of qualified investments held by the bank had increased from the prior evaluation period. The majority of the bank’s qualified investments had been utilized to purchase securities for affordable housing and economic development. Grants and donations provided by the bank also had increased from the prior evaluation period and had been utilized for various purposes, such as affordable housing, community development services, and economic development within the bank’s assessment areas.

In evaluating the Service Test, examiners found that the bank’s delivery systems, banking products and services, and business hours were accessible to essentially all portions of the bank’s assessment areas. The geographical dispersion of the bank’s branch offices by income level was considered fairly diverse, with all income levels represented. Examiners also noted that the bank provided a relatively high level of community development services that benefited LMI individuals and geographies within the bank’s assessment areas.

*CRA Performance of BEA-NY.* BEA-NY was assigned an overall “outstanding” rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency (“OCC”) in January 2010 (“BEA-NY Evaluation”), with a rating of “outstanding” for the Lending Test.<sup>28</sup> In evaluating the Lending Test, examiners found that the bank’s average loan-to-deposit ratio met the standard for outstanding performance, and that the geographical distribution of the bank’s loans reflected excellent dispersion in its assessment areas. A substantial majority of the loans originated by BEA-NY during the period evaluated were within its assessment areas, and examiners noted that the distribution of loans reflected reasonable dispersion among businesses of different sizes and excellent dispersion throughout geographies of different income levels. Examiners also found that the percentage of small business loans made by the bank to businesses in LMI geographies exceeded the percentage of businesses located in these areas during the evaluation period.

*CRA Performance of ICBC-USA.* ICBC-USA was assigned an overall “outstanding” rating at its most recent CRA performance evaluation by the OCC in January 2010 (“ICBC-USA

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<sup>27</sup> The Manufacturers Bank Evaluation was conducted using Large Bank CRA examination procedures. Examiners reviewed small business lending data for 2012 and 2013 and community development loans, investments, and services from November 29, 2010, through February 18, 2014. For community development investments, examiners also considered the current book value of any prior period investments still outstanding as of the subject evaluation. The Manufacturers Bank Evaluation included a full-scope review of the Los Angeles assessment area, comprising the following regions: Los-Angeles-Long Beach-Glendale Metropolitan Division; Santa Ana-Anaheim-Irvine Metropolitan Statistical Area (“MSA”); and Riverside-San Bernardino-Ontario MSA.

<sup>28</sup> The BEA-NY Evaluation was conducted using the Small Bank CRA examination procedures. Examiners reviewed commercial real estate loans from January 1, 2007, through September 30, 2009. The BEA-NY Evaluation included a full-scope review of three counties in New York State: Kings, New York, and Queens, which are part of the New York-Northern New Jersey-Long Island MSA. SMBC’s and BEA’s uninsured branches are not subject to the CRA.

Evaluation”). ICBC-USA received “outstanding” ratings for both the Lending Test and the Community Development Test.<sup>29</sup>

In evaluating the Lending Test, examiners noted that the bank’s average loan-to-deposit ratio was more than reasonable and met the standard for outstanding performance. The geographical distribution of the bank’s loans was considered to reflect excellent dispersion throughout the assessment areas. The distribution of the bank’s loans was also considered to reflect excellent penetration among businesses of different sizes. Examiners also noted that the percentage of small business loans made by the bank to businesses in LMI geographies exceeded the percentage of businesses located in these areas during the evaluation period.

In evaluating the Community Development Test, examiners noted that the bank’s performance demonstrated excellent responsiveness to the needs of the assessment areas through community development loans, investments, and services. During the evaluation period, the bank made community development loans and qualified investments for affordable housing to promote economic development, to revitalize and stabilize LMI areas, and to provide an array of community services, including health care and youth programs. Bank staff also supported various community development services, including financial literacy and homeownership seminars and workshops for senior citizens.

#### *B. Additional Information on Convenience and Needs of Communities to Be Served*

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

The proposal is part of BEA’s efforts to increase its capital base. Applicants represent that the proposal is not expected to result in any discontinuation or material changes to the products or services offered by Applicants’, BEA’s, or ICBC-USA’s U.S. offices, including with respect to LMI neighborhoods. Applicants also represent that after this proposal, they will continue to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and in materially the same manner as before consummation of the proposal.

#### *C. Conclusion on Convenience and Needs Considerations*

The Board has considered all the facts of record, including reports of examination of the CRA performance records of the institutions involved, information provided by Applicants, and confidential supervisory information. Based on the Board’s assessment of the CRA performance of Manufacturers Bank, BEA-NY, and ICBC-USA; its review of examination reports; and its consultation with other agencies, the Board concludes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

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<sup>29</sup> The ICBC-USA Evaluation, which occurred when ICBC-USA was a wholly owned subsidiary of BEA, was conducted using Intermediate Small Bank CRA performance procedures. Examiners reviewed commercial loans from January 1, 2007, through September 30, 2009. The evaluation period for community development loans, investments, and services was April 26, 2006, through January 4, 2010. The ICBC-USA Evaluation included a full-scope review of three statistical areas: New York-Northern New Jersey-Long Island (Multi-State) MSA; San Francisco-San Mateo-Redwood City MSA; and Los Angeles-Long Beach-Glendale MSA.

## Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended section 3 of the BHC Act to require the Board also 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>30</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 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>31</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 to the broader economy.<sup>32</sup>

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. In this case, the proposed acquisition of a noncontrolling interest in BEA is not a significant expansion by SMFG and would have a de minimis impact on SMFG’s systemic footprint. The value of the additional shares that Applicants propose to purchase is approximately \$945 million.<sup>33</sup> The Board generally presumes that an acquisition of less than \$2 billion in assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction, as the proposal merely increases Applicants’ ownership interest from approximately 9.7 percent to 19.9 percent of the voting shares of BEA. Applicants would neither consider BEA a subsidiary nor consolidate its financial performance on their balance sheets.

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 has determined that considerations relating to financial stability are consistent with approval.

## Conclusion

Based on the foregoing and all the facts of record, the Board approves the proposal by Applicants to acquire additional shares of BEA up to 19.9 percent of the voting shares of BEA. 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.

<sup>30</sup> Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

<sup>31</sup> Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

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

<sup>33</sup> This value is based on BEA’s listed price on the Hong Kong Stock Exchange as of September 12, 2014, and the exchange rate as of that date.

The Board conditions its decision on Applicants providing to the Board adequate information on their operations and activities as well as those of their affiliates to determine and enforce compliance by Applicants or their affiliates with applicable federal statutes. Should any restrictions on access to information on the operations or activities of Applicants or any of their affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Applicants or their affiliates with applicable federal statutes, the Board may require termination or divestiture of any of Applicants' or their affiliates' direct or indirect activities in the United States.

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

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

By order of the Board of Governors, effective February 20, 2015.

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

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

## Orders Issued Under Federal Reserve Act

### Banco Popular de Puerto Rico Hato Rey, Puerto Rico

*Order Approving the Acquisition of Assets, Assumption of Liabilities, and the Establishment of Branches*  
*FRB Order No. 2015-10 (February 27, 2015)*

Banco Popular de Puerto Rico ("Banco Popular")<sup>1</sup>, Hato Rey, a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act<sup>2</sup> ("Bank Merger Act") to acquire assets and assume liabilities of Doral Bank ("Doral"), San Juan,<sup>3</sup> a state nonmember bank, both of Puerto Rico. In addition, Banco Popular has applied under section 9 of the Federal Reserve Act ("FRA")<sup>4</sup> to establish and operate branches at the locations of the branches acquired from Doral.

The Federal Deposit Insurance Corporation ("FDIC") has been appointed receiver of Doral and has scheduled the sale of certain assets and the transfer of certain liabilities of Doral for February 27, 2015. The FDIC, as receiver, has selected a consortium bid lead by Banco Popular as the least-cost proposal in accordance with the least-cost-resolution

<sup>1</sup> Banco Popular is a subsidiary of Popular, Inc. ("Popular"), San Juan, Puerto Rico.

<sup>2</sup> 12 U.S.C. § 1828(c).

<sup>3</sup> Doral is a subsidiary of Doral Financial Corporation, San Juan, Puerto Rico.

<sup>4</sup> 12 U.S.C. § 321. These locations are listed in the appendix.

requirements in the Federal Deposit Insurance Act (“FDI Act”)<sup>5</sup> and eliminated more costly proposals.<sup>6</sup> The FDIC has recommended immediate action by the Board on Banco Popular’s consortium proposal to prevent the probable failure of Doral. On the basis of the information before the Board, the Board finds that it must act immediately pursuant to the Bank Merger Act<sup>7</sup> to safeguard the depositors of Doral. Accordingly, public notice of the application and opportunity for comment are not required by the Bank Merger Act.

Banco Popular, with total assets of approximately \$26.2 billion, operates in Puerto Rico, the U.S. Virgin Islands, and New York.<sup>8</sup> Banco Popular is the largest insured depository institution in Puerto Rico, controlling deposits of approximately \$20.1 billion, which represent 46.7 percent of the total amount of deposits of insured depository institutions in the Commonwealth (“total deposits”).<sup>9</sup>

Doral, with total assets of approximately \$6.4 billion, operates in Puerto Rico, New York, and Florida.<sup>10</sup> Doral is the sixth largest insured depository institution in Puerto Rico, controlling deposits of approximately \$2.3 billion, which represent approximately 5.4 percent of the total deposits in the Commonwealth.

On consummation of the proposal, and accounting for the proposed divestitures, Banco Popular would remain the largest insured depository institution in Puerto Rico, controlling deposits of approximately \$21.0 billion, which represent 49.4 percent of total deposits.

### Competitive Considerations

The Board has considered the competitive effects of the proposal in light of all the facts of record. The Bank Merger Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market.<sup>11</sup> The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant banking market, unless the Board finds that the anti-competitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of the communities to be served.<sup>12</sup>

<sup>5</sup> See 12 U.S.C. §§ 1821, 1822, and 1823(c)-(k). The least-cost procedures require the FDIC to choose the resolution method in which the total amount of the FDIC’s expenditures and obligations incurred (including any immediate or long-term obligation and any direct or contingent liability) is the least costly to the Deposit Insurance Fund of all possible methods.

<sup>6</sup> Banco Popular intends to sell Doral’s branches in New York and Florida and certain of its branches in Puerto Rico to other members of its bidding consortium. Its affiliate, Banco Popular North America, New York, New York, has requested the Board’s approval to acquire certain assets and assume certain liabilities of Doral in New York. See *Banco Popular North America*, FRB Order 2015-11 (Feb. 27, 2015) (“BPNA Order”). Centennial Bank, Conway, Arkansas, has requested the Board’s approval to acquire certain assets and assume certain liabilities of Doral in Florida. See *Centennial Bank*, FRB Order 2015-09 (Feb. 27, 2015).

<sup>7</sup> 12 U.S.C. § 1828(c).

<sup>8</sup> Asset and nationwide deposit-ranking data are as of September 30, 2014. State deposit and ranking data are as of June 30, 2014. As of December 31, 2014, Banco Popular had total assets of approximately \$27.1 billion. For purposes of this order, insured depository institutions include commercial banks. No savings associations operate in Puerto Rico.

<sup>9</sup> Puerto Rican market shares and rankings exclude corporate deposits booked in San Juan by Citigroup Inc.

<sup>10</sup> Asset and nationwide deposit-ranking data are as of September 30, 2014. State deposit and ranking data are as of June 30, 2014. As of December 31, 2014, Doral had total assets of approximately \$5.9 billion.

<sup>11</sup> 12 U.S.C. § 1828(c)(5)(A).

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

Banco Popular and Doral compete directly in three banking markets in Puerto Rico and in one banking market in New York.<sup>13</sup> The Board has reviewed the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the financial condition of Doral and the fact that the Office of the Commissioner of Financial Institutions of Puerto Rico (“Puerto Rico OCFI”) has placed the bank into FDIC receivership. In addition, the FDIC, as receiver for Doral, has selected Banco Popular’s consortium bid for Doral in accordance with the least-cost-resolution requirements in the FDI Act. The Board also has considered the resulting loss of Doral as an independent competitor in the banking markets if this transaction is not consummated, as well as various measures of competition and market concentration, and other characteristics of the markets.

Under the proposal, Banco Popular would purchase assets and assume liabilities of Doral and thereby merge Doral’s businesses into a viable ongoing concern with demonstrated capital strength and management capability. Banco Popular’s proposal would continue the availability of credit opportunities and banking services for the customers and communities that Doral served and avoid serious economic disruption in Puerto Rico. The FDIC actively solicited bids for Doral and, after considering Banco Popular’s proposal in light of competing proposals submitted by other bidders, determined that Banco Popular’s bid represented the lowest cost to the Deposit Insurance Fund. On this basis, Banco Popular’s proposal is the only means before the Board of achieving the public benefits discussed above.

In addition, 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”) controlled by Banco Popular; the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);<sup>14</sup> other characteristics of the markets; and, as discussed below, commitments made by Banco Popular to divest branches in two banking markets in Puerto Rico.

In the San Juan, Puerto Rico, banking market (the “San Juan banking market”),<sup>15</sup> Banco Popular is the largest depository institution, controlling approximately \$17.1 billion in deposits, which represent approximately 44.1 percent of deposits in that market.<sup>16</sup> Doral is

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<sup>13</sup> The proposal would not result in substantially adverse competitive effects in the Metro New York City banking market, the banking market in New York in which Banco Popular and Doral compete. *See* BPNA Order.

<sup>14</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 anti-competitive 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. 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>15</sup> The San Juan banking market is defined to include the following municipalities in Puerto Rico: Aguas Buenas, Aibonito, Arecibo, Barceloneta, Barranquitas, Bayamon, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Ciales, Cidra, Comerio, Corozal, Dorado, Fajardo, Florida, Guaynabo, Gurabo, Hatillo, Humacao, Juncos, Lares, Las Piedras, Loiza, Luquillo, Manati, Maunabo, Morovis, Naguabo, Naranjito, Orocovis, Quebradillas, Rio Grande, San Juan, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alto, Utuado, Vega Alta, Vega Baja, and Yabucoa.

<sup>16</sup> In addition to the exclusion of Citigroup Inc.’s corporate deposits booked in San Juan, calculations for the Puerto Rican banking markets also exclude approximately \$700 million in brokered deposits booked in San Juan that will not be acquired by any party to the transaction and include deposits of cooperative lending societies (“cooperativas”) weighted at 50 percent. Cooperativas are Commonwealth-insured depository institutions unique to Puerto Rico. Although cooperativas are membership organizations, few impose membership restric-

the sixth largest depository institution, controlling approximately \$1.4 billion in deposits, which represent approximately 3.7 percent of deposits in that market. In the Aguadilla-Mayaguez, Puerto Rico, banking market (the “Aguadilla-Mayaguez banking market”),<sup>17</sup> Banco Popular is the largest depository institution, controlling approximately \$1.8 billion in deposits, which represent approximately 50 percent of the deposits in that market. Doral is the sixth largest depository institution, controlling approximately \$103 million in deposits, which represent approximately 2.8 percent of the deposits in that market. To mitigate the potentially adverse competitive effects of the proposal in the San Juan and Aguadilla-Mayaguez banking markets, Banco Popular has committed to divest eight branches in the San Juan banking market and both of the Doral branches in the Aguadilla-Mayaguez banking market, which account for approximately \$736 million in deposits in these two markets.<sup>18</sup>

After the divestiture, the proposal would be consistent with Board precedent in the San Juan and Aguadilla-Mayaguez banking markets. Banco Popular would remain the largest depository institution in the Aguadilla-Mayaguez market, and its market share would remain unchanged.

After the divestiture, Banco Popular would remain the largest depository institution in the San Juan banking market, controlling approximately \$18.0 billion in deposits, which represent approximately 46.2 percent of deposits in that market. The HHI would increase 232 points, from 2548 to 2780. Five other commercial banking organizations would remain in that market.

In the Ponce, Puerto Rico, banking market (the “Ponce banking market”),<sup>19</sup> Banco Popular is the largest depository institution, controlling approximately \$944 million in deposits, which represent approximately 39.4 percent of the deposits in that market. Doral is the sixth largest depository institution, controlling approximately \$67 million in deposits, which represent approximately 2.8 percent of the deposits in that market. Upon consummation of the transaction, Banco Popular would remain the largest depository institution in the Ponce banking market, controlling approximately \$1.0 billion in deposits, which represent approximately 42.2 percent of deposits in that market. The HHI would increase by 221 points to 2431. Four other commercial banking organizations would remain in that market.

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tions, and they are authorized to provide a full range of products and services to nonmembers, including transaction accounts for personal and business purposes. For a detailed discussion of the activities of cooperativas, see *BanPonce Corporation*, 77 *Federal Reserve Bulletin* 43, 45 (1991); *Statement by the Board of Governors of the Federal Reserve System Regarding the Application by Banco Santander, S.A.*, 82 *Federal Reserve Bulletin* 833, 834-835 (1996) (“Statement”). The Board previously has recognized and continues to believe that cooperativas are at least as significant as thrift institutions as competitors of commercial banks and should be weighted at 50 percent. See Statement at 835 n.13.

<sup>17</sup> The Aguadilla-Mayaguez banking market is defined to include the following municipalities in Puerto Rico: Aguada, Aguadilla, Anasco, Cabo Rojo, Hormigueros, Isabela, Lajas, Las Marias, Maricao, Mayaguez, Moca, Rincon, Sabana Grande, San German, and San Sebastian.

<sup>18</sup> As a condition to consummation of the proposed merger, Banco Popular has committed that it will execute an agreement to sell within 180 days of consummating the proposed merger the Doral branches in the San Juan and Aguadilla-Mayaguez banking markets to a purchaser determined by the Board to be competitively suitable. If the proposed divestiture is not completed within the 180-day period, Banco Popular commits to transfer the unsold branches to an independent trustee who will be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchaser must be deemed acceptable to the Board. See *BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991). Banco Popular has provided a similar commitment to the DOJ.

<sup>19</sup> The Ponce banking market is defined to include the following municipalities in Puerto Rico: Adjuntas, Coamo, Guanica, Guayanilla, Jayuya, Juana Diaz, Penuelas, Ponce, Salinas, Santa Isabel, Villalba, and Yauco.

The DOJ also has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal, with the proposed divestiture of branches as discussed above, would not likely have a significantly adverse effect on competition in any relevant banking market.

Under these circumstances, and after careful consideration of all the facts of record, the Board concludes that the anticompetitive effects of this proposal in the relevant markets are clearly outweighed in the public interest by the probable effect of the Banco Popular proposal in meeting the convenience and needs of the communities to be served in Puerto Rico.

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

In reviewing a proposal under the Bank Merger Act, the Board considers the financial and managerial resources and future prospects of the institutions involved and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential supervisory and examination information from the Puerto Rico OCFI and the U.S. banking supervisors of the institutions involved, and publicly reported and other financial information, including information provided by Banco Popular.

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial resources, the Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction.

Banco Popular is well capitalized and would remain so on consummation of the proposal. Based on its review of the record in this case, the Board finds that Banco Popular has sufficient financial resources to effect the proposal. As noted, the proposed transaction is structured as a purchase of assets and assumption of liabilities from the FDIC as receiver, and the transaction will be funded by cash.

The Board also has considered the managerial resources of Banco Popular and has reviewed the examination records of Banco Popular, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant banking supervisory agencies, including the FDIC, with the organizations and their records of compliance with applicable banking and anti-money-laundering laws. The Board also has considered Banco Popular's plans for implementing the proposal, including its plans for managing the integration of the acquired assets and operations into the bank.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of Banco Popular are consistent with approval under the Bank Merger Act, as are the other statutory factors.

### **Convenience and Needs Considerations**

In acting on a proposal under the Bank Merger Act, the Board must consider the convenience and needs of the communities to be served and take into account the records of the

relevant depository institutions under the Community Reinvestment Act (“CRA”).<sup>20</sup> The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution’s record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, in evaluating bank acquisition proposals. Banco Popular received an overall rating of “outstanding” at its most recent CRA performance examination by the Federal Reserve Bank of New York, as of January 22, 2013.<sup>21</sup> After consummation of the proposal, Banco Popular plans to implement its CRA policies at the branches and consumer lending operations acquired from Doral.

As noted, the Board believes that the proposal will result in substantial benefits to the convenience and needs of the communities to be served by maintaining the availability of credit and deposit services to customers of Doral. Banco Popular has represented that consummation of the proposal would allow it to provide a broader range of financial products and services to the customers of Doral. Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs of the communities to be served and the CRA performance records of the relevant depository institutions are consistent with approval.

### **Financial Stability**

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended the Bank Merger Act to require the Board to consider a merger proposal’s “risk to the stability of the United States banking or financial system.”<sup>22</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 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>23</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 to the broader economy.<sup>24</sup>

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, Popular would have approximately \$36 billion in total consolidated assets and would not be likely to pose sys-

<sup>20</sup> 12 U.S.C. § 2901 *et seq.*

<sup>21</sup> Banco Popular’s CRA evaluation was conducted using Large Bank CRA Examination Procedures, and examiners reviewed the bank’s lending activity from January 1, 2010, through December 31, 2012.

<sup>22</sup> Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1828(c)(5).

<sup>23</sup> Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

<sup>24</sup> For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

temic risks. Evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors is not present in this transaction. Banco Popular would continue to engage in traditional commercial banking activities. The resulting organization would only experience very small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, Banco Popular's intrafinancial assets and liabilities would comprise a negligible share of the systemwide total, both before and after the transaction, and the resulting firm would control less than 0.2 percent of the assets of all U.S. depository institutions. The resulting organization would not engage in complex activities, nor would it provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

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 has determined that considerations relating to financial stability are consistent with approval.

#### **Establishment of Branches**

Banco Popular has applied under section 9 of the FRA to establish and operate branches at the locations of the branches acquired from Doral, and the Board has considered the factors it is required to consider when reviewing an application under that section.<sup>25</sup> Specifically, the Board has considered Banco Popular's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

#### **Conclusion**

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act and the FRA. Approval of the applications is specifically conditioned on compliance by Banco Popular with all of the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

Because the Board has found that it must act immediately to prevent the probable failure of Doral, the transaction may be consummated immediately. In no event, however, should the transaction 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 by the Federal Reserve Bank of New York acting pursuant to delegated authority.

By order of the Board of Governors, effective February 27, 2015.

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<sup>25</sup> 12 U.S.C. § 322; 12 CFR 208.6.

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

Robert deV. Frierson  
*Secretary of the Board*

## Appendix

### Branches to Be Established by Banco Popular de Puerto Rico

1. Rexville Town Center, Carr Pr-167, Esquina Pr-199, Barrio Pajaros, Bayamon, Puerto Rico
2. 65th Infanteria Km 6.9 San Anton, Carolina, Puerto Rico
3. Plaza Dorado Road #693 Km 8.5 Higuillar, Dorado, Puerto Rico
4. Road #20 Km 3.4, Guaynabo, Puerto Rico
5. 1451 F.D. Roosevelt Avenue, San Juan, Puerto Rico
6. Pr Road Number 2 Corner La Fuente Avenue, Candelaria Ward, Toa Baja, Puerto Rico
7. Carr #181 Barrio Las Cueveas, Trujillo Alto, Puerto Rico

### Banco Popular North America New York, New York

#### *Order Approving the Acquisition of Assets, Assumption of Liabilities, and the Establishment of Branches*

*FRB Order No. 2015–11 (February 27, 2015)*

Banco Popular North America (“BPNA”),<sup>1</sup> New York, New York, a state member bank, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act<sup>2</sup> (“Bank Merger Act”) to acquire certain assets and assume certain liabilities of Doral Bank (“Doral”), San Juan, Puerto Rico,<sup>3</sup> a state nonmember bank, from its affiliate, Banco Popular, San Juan. In addition, BPNA has applied under section 9 of the Federal Reserve Act (“FRA”)<sup>4</sup> to establish and operate branches at the locations of the branches acquired from Doral.

The Federal Deposit Insurance Corporation (“FDIC”) has been appointed receiver of Doral and has scheduled the sale of certain assets and the transfer of certain liabilities of Doral for February 27, 2015. The FDIC, as receiver, has selected a consortium bid led by Banco Popular de Puerto Rico (“Banco Popular”), San Juan, Puerto Rico, as the least-cost proposal in accordance with the least-cost-resolution requirements in the Federal Deposit Insurance Act (“FDI Act”)<sup>5</sup> and eliminated more costly proposals. The FDIC has recommended immediate action by the Board on Banco Popular’s consortium proposal to prevent the probable failure of Doral.

BPNA is a member of the Banco Popular consortium. Banco Popular will acquire Doral’s assets and assume its liabilities from the FDIC.<sup>6</sup> BPNA will then acquire the New York branches of Doral directly from Banco Popular.

<sup>1</sup> BPNA and Banco Popular de Puerto Rico (“Banco Popular”) are subsidiaries of Popular, Inc. (“Popular”), San Juan, Puerto Rico.

<sup>2</sup> 12 U.S.C. § 1828(c).

<sup>3</sup> Doral is a subsidiary of Doral Financial Corporation, San Juan.

<sup>4</sup> 12 U.S.C. § 321. These locations are listed in the appendix.

<sup>5</sup> See 12 U.S.C. §§ 1821, 1822, and 1823(c)-(k). The least-cost procedures require the FDIC to choose the resolution method by which the total amount of the FDIC’s expenditures and obligations incurred (including any immediate or long-term obligation and any direct or contingent liability) is the least costly to the Deposit Insurance Fund of all possible methods.

<sup>6</sup> See *Banco Popular de Puerto Rico*, FRB Order 2015-10 (Feb. 27, 2015).

On the basis of the information before the Board, the Board finds that it must act immediately pursuant to the Bank Merger Act<sup>7</sup> to safeguard the depositors of Doral. Accordingly, public notice of the application and opportunity for comment are not required by the Bank Merger Act.

BPNA, with total assets of approximately \$7.1 billion, operates in Florida, New Jersey, and New York.<sup>8</sup> BPNA is the 42nd largest insured depository institution in New York, controlling deposits of approximately \$2.4 billion, which represent 0.2 percent of the total amount of deposits of insured depository institutions in the state (“total deposits”).

Doral, with total assets of approximately \$6.4 billion, operates in Puerto Rico, New York, and Florida.<sup>9</sup> Doral is the 53rd largest insured depository institution in New York, controlling deposits of approximately \$1.6 billion, which represent 0.1 percent of the total deposits in the state.

On consummation of the proposal, BPNA would become the 31st largest depository institution in New York, controlling deposits of approximately \$3.9 billion, which represent 0.3 percent of total deposits.

### **Competitive Considerations**

The Bank Merger Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market.<sup>10</sup> The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of the communities to be served.<sup>11</sup>

BPNA and Doral compete directly in the Metro New York City, NY-NJ-CT-PA banking market (“Metro New York market”). The Board has reviewed the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the financial condition of Doral and the fact that the Office of the Commissioner of Financial Institutions of Puerto Rico has placed the bank into FDIC receivership. In addition, the FDIC, as receiver for Doral, has selected BPNA’s consortium bid with Banco Popular in accordance with the least-cost-resolution requirements in the FDI Act. The Board also has considered the resulting loss of Doral as an independent competitor in all the banking markets where it operates if this transaction is not consummated, as well as various measures of competition and market concentration, and other characteristics of the market.

Under the proposal, BPNA would purchase certain assets and assume certain liabilities of Doral in New York and thereby merge the branches into a viable ongoing concern with demonstrated capital strength and management capability. BPNA’s proposal would con-

<sup>7</sup> 12 U.S.C. § 1828(c).

<sup>8</sup> Asset and nationwide deposit-ranking data are as of September 30, 2014. State deposit and ranking data are as of June 30, 2014. As of December 31, 2014, BPNA had total assets of approximately \$7.4 billion. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

<sup>9</sup> Asset and nationwide deposit-ranking data are as of September 30, 2014. State deposit and ranking data are as of June 30, 2014. As of December 31, 2014, Doral had total assets of approximately \$6.4 billion.

<sup>10</sup> 12 U.S.C. § 1828(c)(5)(A).

<sup>11</sup> 12 U.S.C. § 1828(c)(5)(B).

tinue the availability of credit opportunities and banking services for the customers and communities that Doral served and avoid serious economic disruption in New York.

In addition, the Board has considered the competitive effects of the proposal in the Metro New York market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative share of total deposits in insured depository institutions in the market (“market deposits”) that BPNA would control;<sup>12</sup> the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);<sup>13</sup> and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Metro New York market. On consummation of the proposal, the Metro New York market would remain unconcentrated as measured by the HHI. The HHI change would be minimal, and numerous competitors would remain in the market.<sup>14</sup>

The DOJ has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in the Metro New York market.

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

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

In reviewing a proposal under the Bank Merger Act, the Board considers the financial and managerial resources and future prospects of the institutions involved and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential supervisory and examination information from the U.S. banking supervisors of the institutions involved, and publicly reported and other financial information, including information provided by BPNA.

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<sup>12</sup> Deposit and market share data are as of June 30, 2014, 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>13</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 anti-competitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

<sup>14</sup> BPNA operates the 38th largest depository institution in the Metro New York market, controlling approximately \$2.6 billion in deposits, which represent less than 1 percent of market deposits. Doral operates the 52nd largest depository institution in the same market, controlling deposits of approximately \$1.6 billion, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, BPNA would become the 32nd largest depository institution in the market, controlling deposits of approximately \$4.2 billion, which represent less than 1 percent of market deposits. The HHI for the Metro New York market would remain unchanged at 1308, and 252 competitors would remain in the market.

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial resources, the Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction.

BPNA is well capitalized and would remain so on consummation of the proposal. Based on its review of the record in this case, the Board finds that BPNA has sufficient financial resources to effect the proposal. As noted, the proposed transaction is structured as a purchase of certain assets and assumption of certain liabilities from Banco Popular, which will purchase the assets and assume the liabilities from the FDIC as receiver, and the transaction will be funded by cash.

The Board also has considered the managerial resources of BPNA and has reviewed the examination records of BPNA, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant banking supervisory agencies, including the FDIC, with the organizations and their records of compliance with applicable banking and anti-money-laundering laws. The Board also has considered BPNA's plans for implementing the proposal, including its plans for managing the integration of the acquired assets and operations into the bank.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of BPNA are consistent with approval under the Bank Merger Act, as are the other statutory factors.

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

In acting on a proposal under the Bank Merger Act, the Board must consider the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").<sup>15</sup> The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank acquisition proposals.

The Board has considered all the facts of record, including reports of examination of the CRA performance of BPNA, information provided by BPNA, and confidential supervisory information.

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

As provided in the CRA, the Board evaluates an institution's performance based on the CRA evaluation completed by that institution's primary regulator.<sup>16</sup> The CRA requires

<sup>15</sup> 12 U.S.C. § 2901 *et seq.*

<sup>16</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 75FederalRegister 11642,11665 (March 11, 2010).

that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.<sup>17</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 of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

*CRA Performance of BPNA.* BPNA received an overall rating of "satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of New York, as of July 15, 2013.<sup>18</sup> BPNA received a "low satisfactory" rating for the Lending Test, a "high satisfactory" rating for the Investment Test, and an "outstanding" rating for the Service Test.

In evaluating the Service Test, examiners noted that BPNA's delivery systems were readily accessible to the bank's assessment areas and to individuals of different income levels and that alternate delivery systems provided improved accessibility to bank services throughout its assessment areas. The examiners concluded that BPNA could be considered a leader in the provision of community development services.

In evaluating the Investment Test, examiners found that BPNA demonstrated adequate responsiveness to credit and community development needs and rarely used complex investments to support community development initiatives. The examiners also noted that BPNA had a significant level of qualified community development investments in its assessment areas.

In evaluating the Lending Test, examiners found that BPNA's overall lending activity reflected adequate responsiveness to the credit needs of its assessment areas and that BPNA originated a high percentage of its loans in its assessment areas during the period reviewed. In addition, examiners noted that the geographic distribution of loans demonstrated excellent penetration throughout LMI geographies and adequate penetration among customers of different income levels and among business customers of different sizes.

After consummation of the proposal, BPNA plans to implement its CRA policies at the acquired branches of Doral.

#### *B. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization*

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. The Board believes that the proposal will result in substantial benefits to the convenience and needs of the communities to be served by maintaining the availability of credit and deposit services to customers of Doral. BPNA notes that without its purchase and assumption of certain assets and liabilities of Doral, Doral's operations would likely cease to exist. In addition, BPNA represents that it will be better positioned to meet the credit needs of the communities currently served by Doral's New York branches. BPNA's customers will continue to receive the full range of products and services to which they are accustomed. In addition, BPNA represents that the proposal will result in an overall enhancement in banking products and financial services available to members of the

<sup>17</sup> 12 U.S.C. § 2906.

<sup>18</sup> BPNA's CRA evaluation was conducted using Large Bank CRA Examination Procedures, and examiners reviewed the bank's lending activity from January 1, 2011, through December 31, 2013.

communities in which Doral's New York branches are located. BPNA anticipates that it will be able to expand and strengthen the services already provided to current customers of both Doral's New York branches and BPNA.

### *C. Conclusion on Convenience and Needs Considerations*

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by BPNA, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of BPNA, its review of examination reports, and its consultations with other agencies, the Board concludes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

### **Financial Stability**

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the Bank Merger Act to require the Board to consider a merger proposal's "risk to the stability of the United States banking or financial system."<sup>19</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 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>20</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 to the broader economy.<sup>21</sup>

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, Popular would have approximately \$36 billion in total consolidated assets and would not be likely to pose systemic risks. Evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors is not present in this transaction. BPNA would continue to engage in traditional commercial banking activities. The resulting organization would only experience very small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, BPNA's intrafinancial assets and liabilities would comprise a negligible share of the systemwide total, both before and after the transaction, and the resulting firm would control less than 0.2 percent of the assets of all U.S. depository institutions. The resulting organization would not engage in complex activities, nor would it

<sup>19</sup> Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1828(c)(5).

<sup>20</sup> Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

<sup>21</sup> For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

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 has determined that considerations relating to financial stability are consistent with approval.

### **Establishment of Branches**

BPNA has applied under section 9 of the FRA to establish and operate branches at the locations of the branches acquired from Doral, and the Board has considered the factors it is required to consider when reviewing an application under that section.<sup>22</sup> Specifically, the Board has considered BPNA's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

### **Conclusion**

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act and the FRA. Approval of the applications is specifically conditioned on compliance by BPNA with all of the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

Because the Board has found that it must act immediately to prevent the probable failure of Doral, the transaction may be consummated immediately. In no event, however, should the transaction 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 by the Federal Reserve Bank of New York acting pursuant to delegated authority.

By order of the Board of Governors, effective February 27, 2015.

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

Robert deV. Frierson  
*Secretary of the Board*

### **Appendix**

#### **Branches to Be Established by Banco Popular North America**

1. 623 Fifth Avenue, New York, New York 10022
2. 875 Third Avenue, New York, New York 10022
3. 345 Park Avenue South, New York, New York 10010

<sup>22</sup> 12 U.S.C. § 322; 12 CFR 208.6.

## Centennial Bank Conway, Arkansas

### *Order Approving the Acquisition of Assets, Assumption of Liabilities, and the Establishment of Branches*

*FRB Order No. 2015-09 (February 27, 2015)*

Centennial Bank (“Centennial”),<sup>1</sup> Conway, Arkansas, a state member bank, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act<sup>2</sup> (“Bank Merger Act”) to acquire certain assets and assume certain liabilities of Doral Bank (“Doral”), San Juan, Puerto Rico, a state nonmember bank. In addition, Centennial has applied under section 9 of the Federal Reserve Act (“FRA”)<sup>3</sup> to establish and operate branches at the locations of the branches acquired from Doral.

The Federal Deposit Insurance Corporation (“FDIC”) has been appointed receiver of Doral and has scheduled the sale of certain assets and the transfer of certain liabilities of Doral for February 27, 2015. The FDIC, as receiver, has selected a consortium bid lead by Banco Popular de Puerto Rico (“Banco Popular”), San Juan, Puerto Rico, as the least-cost proposal in accordance with the least-cost-resolution requirements in the Federal Deposit Insurance Act (“FDI Act”)<sup>4</sup> and eliminated more costly proposals. The FDIC has recommended immediate action by the Board on Banco Popular’s consortium proposal to prevent the probable failure of Doral.

Centennial is a member of the Banco Popular consortium. Banco Popular will acquire certain assets and assume certain liabilities from the FDIC.<sup>5</sup> Centennial will then acquire the Florida branches of Doral directly from Banco Popular.

On the basis of the information before the Board, the Board finds that it must act immediately pursuant to the Bank Merger Act<sup>6</sup> to safeguard the depositors of Doral. Accordingly, public notice of the application and opportunity for comment is not required by the Bank Merger Act.

Centennial, with total assets of approximately \$7.2 billion, operates in Alabama, Arkansas, and Florida.<sup>7</sup> Centennial is the 35th largest insured depository institution in Florida, controlling deposits of approximately \$1.5 billion, which represent 0.3 percent of the total deposits of insured depository institutions in the state (“total deposits”).

Doral, with total assets of approximately \$6.4 billion, operates in Puerto Rico, New York, and Florida.<sup>8</sup> Doral is the 50th largest insured depository institution in Florida, controlling

<sup>1</sup> Centennial is a subsidiary of Home Bancshares, Inc. (“Home”), Conway, Arkansas.

<sup>2</sup> 12 U.S.C. § 1828(c).

<sup>3</sup> 12 U.S.C. § 321. These locations are listed in the appendix.

<sup>4</sup> See 12 U.S.C. §§ 1821, 1822, and 1823(c)-(k). The least-cost procedures require the FDIC to choose the resolution method in which the total amount of the FDIC’s expenditures and obligations incurred (including any immediate or long-term obligation and any direct or contingent liability) is the least costly to the Deposit Insurance Fund of all possible methods.

<sup>5</sup> See *Banco Popular de Puerto Rico*, FRB Order 2015-10 (Feb. 27, 2015).

<sup>6</sup> 12 U.S.C. § 1828(c).

<sup>7</sup> Asset and nationwide deposit-ranking data are as of September 30, 2014. State deposit and ranking data are as of June 30, 2014. As of December 31, 2014, Centennial had total assets of approximately \$7.2 billion. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

<sup>8</sup> Asset and nationwide deposit-ranking data are as of September 30, 2014. State deposit and ranking data are as of June 30, 2014. As of December 31, 2014, Doral had total assets of approximately \$5.9 billion.

deposits of approximately \$921 million, which represent 0.2 percent of the total deposits in that state.

On consummation of this proposal, Centennial would become the 25th largest insured depository institution in Florida, controlling deposits of approximately \$2.4 billion, which represent 0.5 percent of the total deposits in that state.

### **Competitive Considerations**

The Bank Merger Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market.<sup>9</sup> The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of the communities to be served.<sup>10</sup>

Centennial and Doral compete directly in the Pensacola and Panama City banking markets, both in Florida. The Board has reviewed the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the financial condition of Doral and the fact that the Office of the Commissioner of Financial Institutions of Puerto Rico (“Puerto Rico OCFI”) has placed the bank into FDIC receivership. In addition, the FDIC, as receiver for Doral, has selected Centennial’s consortium bid with Banco Popular in accordance with the least-cost-resolution requirements in the FDI Act. The Board also has considered the resulting loss of Doral as an independent competitor in all the banking markets where it operates if this transaction is not consummated, as well as various measures of competition and market concentration, and other characteristics of the markets.

Under the proposal, Centennial would purchase certain assets and assume certain liabilities of Doral in Florida and thereby merge the branches acquired from Doral into a viable ongoing concern with demonstrated capital strength and management capability. Centennial’s proposal would continue the availability of credit opportunities and banking services for the customers and communities that Doral served and avoid serious economic disruption in Florida.

In addition, the Board has considered the competitive effects of the proposal in the Pensacola and Panama City banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets; the relative shares of total deposits in insured depository institutions in the markets (“market deposits”) that Centennial would control; the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);<sup>11</sup> and other characteristics of the markets.

<sup>9</sup> 12 U.S.C. § 1828(c)(5)(A).

<sup>10</sup> 12 U.S.C. § 1828(c)(5)(B).

<sup>11</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 the Panama City Area, Florida, banking market (the “Panama City banking market”),<sup>12</sup> Centennial is the fifth largest depository institution, controlling approximately \$256.4 million in deposits, which represent approximately 8.8 percent of deposits in that market. Doral is the largest depository institution, controlling approximately \$763 million in deposits, which represent approximately 23.7 percent of deposits in that market. In the Pensacola Area, Florida, banking market (the “Pensacola banking market”),<sup>13</sup> Centennial is the 17th largest depository institution, controlling approximately \$22.5 million in deposits, which represent less than 1 percent of the deposits in that market. Doral is the 11th largest depository institution, controlling approximately \$158.2 million in deposits, which represent approximately 3.3 percent of the deposits in that market.

This proposal would be consistent with Board precedent in the Panama City and Pensacola banking markets. Centennial would become the largest depository institution in the Panama City banking market, controlling approximately \$1.0 billion in deposits, which represent approximately 31.7 percent of deposits in that market. The HHI would increase approximately 379 points, from 1164 to 1542. Fifteen other commercial banking organizations would remain in that market. Centennial would become the tenth largest depository institution in the Pensacola banking market, controlling approximately \$180.7 million in deposits, which represent approximately 3.8 percent of deposits in that market. The HHI would increase by 3 points, from 1111 to 1114. Twenty other commercial banking organizations would remain in that market.

The DOJ has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market.

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

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

In reviewing a proposal under the Bank Merger Act, the Board considers the financial and managerial resources and future prospects of the institutions involved and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential supervisory and examination information from the U.S. banking supervisors of the institutions involved, and publicly reported and other financial information, including information provided by Centennial.

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial resources, the Board also evaluates the financial condition of the

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in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. 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>12</sup> The Panama City banking market includes Bay and Gulf counties, and the southern half of Washington County, including the towns of Vernon and Wausau, all in Florida.

<sup>13</sup> The Pensacola banking market is defined to include Escambia and Santa Rosa Counties, Florida.

combined organization at consummation, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction.

Centennial is well capitalized and would remain so on consummation of the proposal. Based on its review of the record in this case, the Board finds that Centennial has sufficient financial resources to effect the proposal. As noted, the proposed transaction is structured as a purchase of certain assets and assumption of certain liabilities from Banco Popular, which has purchased the assets and assumed the liabilities from the FDIC as receiver, and the transaction will be funded by cash.

The Board also has considered the managerial resources of Centennial and has reviewed the examination records of Centennial, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant banking supervisory agencies, including the FDIC, with the organization and its record of compliance with applicable banking and anti-money-laundering laws. The Board also has considered Centennial's plans for implementing the proposal, including its plans for managing the integration of the acquired assets and operations into the bank.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of Centennial are consistent with approval under the Bank Merger Act, as are the other statutory factors.

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

In acting on a proposal under the Bank Merger Act, the Board must consider the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").<sup>14</sup> The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank acquisition proposals.

The Board has considered all the facts of record, including reports of examination of the CRA performance of Centennial, information provided by Centennial, and confidential supervisory information.

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

As provided in the CRA, the Board evaluates an institution's performance based on the CRA evaluation completed by that institution's primary regulator.<sup>15</sup> The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.<sup>16</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 of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

<sup>14</sup> 12 U.S.C. § 2901 *et seq.*

<sup>15</sup> See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (March 11, 2010).

<sup>16</sup> 12 U.S.C. § 2906.

*CRA Performance of Centennial*. Centennial received an overall rating of “satisfactory” at its most recent CRA performance examination by the Federal Reserve Bank of St. Louis, as of July 8, 2013.<sup>17</sup> Centennial received “high satisfactory” ratings for the Lending Test, the Investment Test, and the Service Test.

In evaluating the Service Test, examiners noted that Centennial’s delivery systems were accessible to the bank’s assessment areas and individuals of different income levels. In addition, examiners noted that Centennial’s services did not vary in a way that would inconvenience individuals in its assessment area. The examiners also noted that Centennial provided a relatively high level of community development services within the assessment areas.

In evaluating the Investment Test, examiners found that Centennial made a significant level of qualified community development investments and grants and was occasionally in a leadership position. The examiners also noted that Centennial made a good level of qualified community development investments in its assessment areas.

In evaluating the Lending Test, examiners found that Centennial’s overall lending activity reflected good responsiveness to the credit needs of its assessment areas and that Centennial originated a substantial percentage of its loans in its assessment areas during the period reviewed. In addition, examiners noted that the geographic distribution of loans demonstrated good penetration throughout the assessment areas and among customers of different income levels and business customers and farms of different sizes.

After consummation of the proposal, Centennial plans to implement its CRA policies at the branches acquired from Doral.

#### *B. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization*

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. The Board believes that the proposal will result in substantial benefits to the convenience and needs of the communities to be served by maintaining the availability of credit and deposit services to customers of Doral. Centennial represents that Doral’s customers will continue to receive the full range of products and services to which they are accustomed. Although Centennial does not anticipate that there will be any immediate significant changes in services or products as a result of the proposal, Centennial’s management will evaluate the products, services, and fee schedules of Doral and make certain changes in order to align them with what is currently offered by Centennial.

#### *C. Conclusion on Convenience and Needs Considerations*

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Centennial, and confidential supervisory information. Based on the Board’s assessment of the CRA performance and consumer compliance programs of Centennial, its review of examination reports, and its consultations with other agencies, the Board concludes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

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<sup>17</sup> Centennial’s CRA evaluation was conducted using Large Bank CRA Examination Procedures, and examiners reviewed the bank’s lending activity in 2011 and 2012.

### Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended the Bank Merger Act to require the Board to consider a merger proposal’s “risk to the stability of the United States banking or financial system.”<sup>18</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 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>19</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 to the broader economy.<sup>20</sup>

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, Home would have approximately \$7.9 billion in consolidated assets and would not be likely to pose systemic risks. The Board generally presumes that a merger resulting in a firm with less than \$25 billion in total consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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

### Establishment of Branches

Centennial has applied under section 9 of the FRA to establish and operate branches at the locations of the acquired branches of Doral, and the Board has considered the factors it is required to consider when reviewing an application under that section.<sup>21</sup> Specifically, the Board has considered Centennial’s financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

<sup>18</sup> Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1828(c)(5).

<sup>19</sup> Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

<sup>20</sup> For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

<sup>21</sup> 12 U.S.C. § 322; 12 CFR 208.6.

## Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act and the FRA. Approval of the applications is specifically conditioned on compliance by Centennial with all the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

Because the Board has found that it must act immediately to prevent the probable failure of Doral, the transaction may be consummated immediately. In no event, however, should the transaction 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 by the Federal Reserve Bank of St. Louis acting pursuant to delegated authority.

By order of the Board of Governors, effective February 27, 2015.

Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Robert deV. Frierson  
*Secretary of the Board*

## Appendix

1. 1002 West 23rd Street, Panama City, Florida 32405
2. 701 Harrison Avenue, Panama City, Florida 32401
3. 123 North Tyndall Parkway, Panama City, Florida 32404
4. 415 North Richard Jackson Blvd., Panama City Beach, Florida 32404
5. 4920 Bayou Blvd., Pensacola, Florida 32503

## Comerica Bank Dallas, Texas

### *Order Approving Establishment of a Branch FRB Order No. 2015-01 (January 15, 2015)*

Comerica Bank, a state member bank subsidiary of Comerica Incorporated, both of Dallas, Texas, has requested the Board's approval under section 9 of the Federal Reserve Act ("FRA")<sup>1</sup> and the Board's Regulation H<sup>2</sup> to establish a branch at 31 68th Avenue, Coopersville, Michigan (the "Coopersville branch").

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board's Rules of Procedure.<sup>3</sup> The time for submitting comments has expired, and the Board has considered the notice and all comments received in light of the factors specified in the FRA.

Comerica Bank is the second largest depository institution in Michigan with 215 branches, controlling approximately \$25.8 billion in deposits, which represent approximately 14.6 per-

<sup>1</sup> 12 U.S.C. § 321 *et seq.*

<sup>2</sup> 12 CFR part 208.

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

cent of the total amount of deposits of insured depository institutions in the state.<sup>4</sup> Comerica Bank's main office is in Dallas, and it operates 138 branches throughout Texas. Comerica Bank operates a total of 485 branches in Arizona, California, Florida, Michigan, and Texas.

Under the Board's Regulation H, which implements section 9 of the FRA,<sup>5</sup> the factors that the Board must consider in acting on branch applications include (1) the financial history and condition of the applying bank and the general character of its management; (2) the adequacy of the bank's capital and its future earnings prospects; (3) the convenience and needs of the community to be served by the branch; (4) in the case of branches with deposit-taking capability, the bank's performance under the Community Reinvestment Act ("CRA");<sup>6</sup> and (5) whether the bank's investment in bank premises in establishing the branch satisfies certain criteria.<sup>7</sup>

The Board has considered the application in light of these factors and the public comment received on the proposal. A commenter objected to the proposal, alleging that Comerica Bank discriminates against African Americans and redlines African American neighborhoods, particularly in the Houston, Texas Metropolitan Statistical Area ("Houston MSA"), with respect to its branching, marketing, and lending activities.<sup>8</sup>

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

In considering the financial history and condition, earnings prospects, and capital adequacy of Comerica Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Comerica Bank, and the comment received. Comerica Bank is well capitalized and would remain so on consummation of the proposal. After considering all the facts of record, the Board has concluded that the financial history and condition, capital adequacy, and future earnings prospects of Comerica Bank are consistent with approval of the proposal. The Board also has reviewed Comerica Bank's proposed investment in the Coopersville branch and concluded that its investment is consistent with regulatory limitations on investment in bank premises.<sup>9</sup>

In considering Comerica Bank's managerial resources, the Board has reviewed the bank's examination record, including assessments of its management, risk-management systems, and operations. The Board also has considered its supervisory experiences with Comerica Bank and the bank's record of compliance with applicable banking laws, including anti-money laundering laws. Comerica Bank is considered to be well managed. Based on this review and all the facts of record, the Board has concluded that the character of Com-

<sup>4</sup> Data are as of June 30, 2014, the most recent available, and are updated to reflect mergers through the date. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

<sup>5</sup> 12 CFR 208.6(b).

<sup>6</sup> 12 U.S.C. § 2901 *et seq.*

<sup>7</sup> Section 9 of the FRA, 12 U.S.C. § 321, which applies the interstate branching provisions of the National Bank Act, 12 U.S.C. § 36(c)(2), permits a state member bank with a branch in a state other than the bank's home state to establish additional branches in that state to the same extent as a bank chartered in that state. Comerica Bank currently operates branches in Michigan and is permitted under both Michigan state law and section 9 of the FRA to establish additional branches in Michigan. *See* 12 U.S.C. §§ 36(c)(2), 36(f)(1)(A); Mich. Comp. Laws Ann. § 487.13711(7) (stating that an out-of-state bank located in a state whose laws permit the establishment of a branch in that state, may establish and operate branches in Michigan).

<sup>8</sup> Redlining is the practice of denying a creditworthy applicant a loan or service in a certain neighborhood even though the applicant may otherwise be eligible for the loan or service.

<sup>9</sup> 12 CFR 208.21(a).

erica Bank's management, as well as the records of effectiveness of Comerica Bank in combatting money laundering activities, are consistent with approval of the proposal.

### Convenience and Needs Considerations

The Board also has considered the convenience and needs of the community to be served, taking into account the comment received and the bank's performance under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation.<sup>10</sup> In addition, the CRA requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.<sup>11</sup>

The Board has considered all the facts of record, including reports of examination of the CRA performance of Comerica Bank, data reported by Comerica Bank under the Home Mortgage Disclosure Act ("HMDA"),<sup>12</sup> other information provided by Comerica Bank, confidential supervisory information, the public comment received on the proposal, and other information. As noted above, a commenter objected to the proposal, alleging that Comerica Bank had engaged in discriminatory lending practices, particularly in the Houston MSA.

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

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of that institution.<sup>13</sup> The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.<sup>14</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 of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

Comerica Bank was assigned an overall "satisfactory" rating at its CRA performance evaluation by the Federal Reserve Bank of Dallas ("Reserve Bank") as of August 16, 2012 ("Comerica Bank Evaluation").<sup>15</sup> Comerica Bank received "high satisfactory" ratings for the Lending Test and the Service Test, and an "outstanding" rating for the Investment Test.<sup>16</sup> In Texas, Comerica Bank received an overall "outstanding" rating, a "high satisfactory" rating for the Lending Test, and "outstanding" ratings for the Investment Test and the Service Test.

<sup>10</sup> 12 U.S.C. § 2901(b).

<sup>11</sup> 12 U.S.C. § 2903.

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

<sup>13</sup> See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

<sup>14</sup> 12 U.S.C. § 2906.

<sup>15</sup> The Comerica Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The scope of the Comerica Bank Evaluation for the Lending Test included an evaluation of data from January 1, 2010, through December 31, 2011, as well as data regarding certain community development loans from July 28, 2011, through December 31, 2012. The Investment Test and the Service Test included evaluations of data from January 1, 2010, through March 31, 2012.

<sup>16</sup> The Comerica Bank Evaluation included a review of Comerica Bank's 38 assessment areas, including a full-scope review of 18 of these assessment areas. The Comerica Bank Evaluation included a full-scope review of at least one assessment area within each state where Comerica Bank had an office.

As described in the Comerica Bank Evaluation, Reserve Bank examiners found that the bank's overall lending activity in the assessment areas was good in the origination and purchasing of HMDA-reportable loans and small business loans. Examiners also found that Comerica Bank's lending levels reflected a good responsiveness to the assessment areas' credit needs. Examiners noted that the bank had a good penetration of loans among borrowers of different income levels, and among farms and businesses of different sizes. Examiners also found that the bank had an excellent geographic distribution of loans in the assessment areas, including in LMI geographies in the assessment areas.

Examiners noted that Comerica Bank made an adequate level of community development loans. Examiners found that Comerica made use of innovative and flexible lending practices to serve the credit needs of its assessment areas. Examiners also noted that Comerica Bank's community development loans were used for a variety of purposes, including the financing of affordable housing and high-impact community development projects; the promotion of economic development and job creation; and the revitalization of targeted communities in LMI geographies.

In evaluating Comerica Bank's performance under the Investment Test, examiners found that Comerica Bank made an excellent level of qualified community development investments and grants during the evaluation period. Examiners noted that the bank's investments were particularly responsive to the assessment areas' needs for affordable housing and financial assistance to small businesses. Examiners highlighted Comerica Bank's investments in low-income housing tax credit projects, mortgage-backed securities, small-business investment corporations, community development financial institutions, municipal bonds targeted to LMI areas, zero-interest deposits, and mutual funds that supported affordable housing. Examiners also noted that Comerica Bank made charitable contributions to support affordable housing initiatives; small business development; and educational, health care, and social services organizations that primarily served LMI individuals and geographies.

In evaluating Comerica Bank's performance under the Service Test, examiners found that Comerica Bank's retail banking services and products were generally accessible to businesses of different sizes and individuals of different income levels. Further, examiners highlighted that Comerica Bank had demonstrated leadership in providing community development services in its assessment areas, and offered financial literacy programs, affordable housing seminars, and other economic development services.

### *B. Fair Lending and Other Consumer Protection Laws*

*Fair Lending Analysis.* The Board reviewed Comerica Bank's branching, marketing, and lending activities, particularly in the Houston MSA, and performed a redlining review of small business lending and residential mortgage lending for 2012 and 2013.

Examiners found that more than 26 percent of Comerica Bank's branches are located in LMI tracts in the Houston MSA. Examiners considered this percentage to be reasonable and adequate in providing banking services to the LMI populations in that area, based on the percentage of LMI census tracts in the Houston MSA and based on examination guidelines. Examiners also found that more than 45 percent of Comerica Bank's branches in the Houston MSA are in census tracts where minority residents represent a majority of the population. Examiners reviewed Comerica Bank's marketing and outreach activities in the Houston MSA and found that these activities extend to all geographies in the Houston MSA and that the bank advertises in media outlets that reach minority populations and sponsors community events, civic organizations, and multi-cultural initiatives designed to attract minorities. Examiners also found that Comerica Bank's branching in the Houston

MSA shows reasonable penetration of LMI tracts and tracts where minority residents represent a majority of the population, and that the bank's marketing activities and community outreach activities reach, and in some cases specifically target, LMI and minority populations, including African Americans.

Examiners also reviewed Comerica Bank's lending policies and procedures, including its fair lending policy. Comerica Bank has instituted a detailed and comprehensive consumer compliance and fair lending program. Comerica Bank conducts ongoing monitoring and testing, including performing fair lending risk assessments and audits, to ensure compliance with all fair lending and other consumer protection laws and regulations. The bank also performs statistical analyses of its lending data and comparative file reviews to detect underwriting and pricing disparities. In addition, Comerica Bank's policies require that its mortgage lending meet well defined guidelines and underwriting criteria, and any exceptions must be well documented and approved by a senior underwriter. Comerica Bank requires mandatory annual fair lending training for all of its employees and offers targeted fair lending training to employees and senior management on an ongoing basis.

*HMDA Data.* The Board analyzed Comerica Bank's HMDA data from 2012 and 2013 in the Houston MSA related to all HMDA-reportable loans to develop a view of the bank's overall lending patterns, and examined the subset of those data related specifically to the loan products that were the subject of the public comment received on the proposal, including small business lending. The Board analyzed Comerica Bank's assessment area in the Houston MSA, which includes the specific market areas addressed in the public comment.

The Board is concerned when HMDA data for an institution indicate lending disparities. The Board believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also to provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether a bank excludes or denies credit to any group on a prohibited basis.<sup>17</sup> Fully evaluating a bank's compliance with fair lending laws and regulations requires a thorough review of the bank's application and underwriting policies and procedures, as well as access to information contained in the application files, to determine whether the observed lending disparities persist after taking into account legitimate underwriting factors.

In comparing the percentage of Comerica Bank's HMDA applications and originations in majority-minority census tracts to other similarly situated lenders, examiners did not find statistically significant disparities in the Houston MSA in 2012 or 2013. In addition, examiners did not find statistically significant disparities in the percentages of lending by the bank in African American-only census tracts compared to the aggregate in the Houston MSA. In reviewing Comerica Bank's small business lending in the Houston MSA in 2012 and 2013, examiners found that the bank outperformed the aggregate in majority-minority census tracts as well as in African American-only census tracts.

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<sup>17</sup> The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of any applicant's creditworthiness. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not always available from HMDA data.

### *C. Conclusion on Convenience and Needs Considerations*

Comerica Bank proposes to establish the Coopersville branch in connection with the planned closure of another Comerica Bank branch, located at 345 Main Street, Coopersville, Michigan, which is approximately 1.4 miles from the proposed location of the Coopersville branch. The Coopersville branch would be within the same census tract as the branch on Main Street. Comerica Bank represents that the Coopersville branch would provide public benefits by enabling customers to maintain access to its banking services after the closure of the branch on Main Street. Comerica Bank also represents that the Coopersville branch would provide public benefits by increasing functionality and convenience for its customers, and the branch's visibility would attract new opportunities for its customers in the area. Based on all the facts of record, including consultations with other agencies, and for the reasons described in this order, the Board concludes that the convenience and needs factor, including Comerica Bank's CRA record, is consistent with approval of the application.

### **Conclusion**

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.<sup>18</sup> The Board's approval is specifically conditioned on Comerica Bank's compliance with all commitments made to the Board in connection with the proposal as well as all conditions imposed in this order. The commitments and conditions relied on by the Board are deemed to be conditions imposed in writing in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

Approval of this application is also subject to the establishment of the proposed branch within one year of the date of this order, unless such period is extended by the Board or the Reserve Bank, acting under authority delegated by the Board.

By order of the Board of Governors, effective January 15, 2015.

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

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

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<sup>18</sup> The Board interprets the comment received on the proposal to include a request that the Board hold public hearings on the proposal. Under its rules, the Board may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

## First Farmers Bank & Trust Converse, Indiana

### *Order Approving the Merger of Banks and the Establishment of a Branch FRB Order No. 2015-06 (February 17, 2015)*

First Farmers Bank & Trust (“FFBT”), Converse, Indiana,<sup>1</sup> a state member bank, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act<sup>2</sup> (“Bank Merger Act”) to merge with First National Bank of Chrisman (“Chrisman”), Chrisman, Illinois.<sup>3</sup> In addition, FFBT has applied under section 9 of the Federal Reserve Act (“FRA”)<sup>4</sup> to establish and operate a branch at the location of Chrisman’s sole office.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board’s Rules of Procedure.<sup>5</sup> The time for filing comments has expired. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General. The Board has considered the applications and all comments received in light of the factors set forth in the Bank Merger Act and the FRA.

FFBT, with total assets of approximately \$1.4 billion, operates in Indiana and Illinois.<sup>6</sup> FFBT is the 23rd largest insured depository institution in Indiana, controlling deposits of approximately \$1.0 billion, which represent less than 1 percent of the total deposits in insured depository institutions in the state (“state deposits”).<sup>7</sup> FFBT is the 173rd largest insured depository institution in Illinois, controlling deposits of approximately \$221.0 million, which represent less than 1 percent of total state deposits.

Chrisman, with total assets of approximately \$38.5 million, operates only in Illinois. Chrisman is the 478th largest insured depository institution in Illinois, controlling deposits of approximately \$34.8 million, which represent less than 1 percent of total state deposits. On consummation of the proposal, FFBT would become the 150th largest insured depository institution in Illinois, controlling deposits of approximately \$255.8 million, representing less than 1 percent of total state deposits.

### **Interstate Analysis**

Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (“Riegle-Neal Act”) authorizes a bank to merge with a bank located in another state under certain conditions unless, before June 1, 1997, the home state of one of the banks involved in the transaction adopted a law expressly prohibiting merger transactions involving out-of-state banks.<sup>8</sup> For purposes of the Riegle-Neal Act, the home state of FFBT is Indiana,

<sup>1</sup> FFBT is a subsidiary of First Farmers Financial Corporation, a financial holding company, also of Converse, Indiana.

<sup>2</sup> 12 U.S.C. § 1828(c).

<sup>3</sup> Chrisman is a subsidiary of Chrisman Bancorp, Inc., a bank holding company, Springfield, Illinois.

<sup>4</sup> 12 U.S.C. § 321.

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

<sup>6</sup> Asset data are as of September 30, 2014, updated to include the assets acquired by FFBT through the purchase of nine branches from BMO Harris Bank National Association, Chicago, Illinois, on November 14, 2014.

<sup>7</sup> Deposit data and state rankings are as of June 30, 2014, updated to include the anticipated mergers with Community Bank, Hoopston, Illinois, and United Community Bank, Oakwood, Illinois, both of which were approved by the Federal Reserve on February 3, 2015. In this context, insured depository institutions include insured commercial banks, savings banks, and savings associations.

<sup>8</sup> 12 U.S.C. § 1831u.

and the home state of Chrisman is Illinois.<sup>9</sup> FFBT has provided a copy of its Bank Merger Act application to the relevant state agency and has complied with state law filing requirements.<sup>10</sup> The proposal also complies with all other requirements of the Riegle-Neal Act.<sup>11</sup> Accordingly, the Riegle-Neal Act does not prohibit this interstate branch acquisition.

### Competitive Considerations

The Bank Merger Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.<sup>12</sup> The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of communities to be served.<sup>13</sup>

FFBT and Chrisman compete directly in the Edgar County, Illinois market.<sup>14</sup> FFBT operates two branches in Paris, Illinois, located in the southern portion of the market. Chrisman's main office and only location is in Chrisman, Illinois, in the northern portion of the market. The Board has reviewed the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market, the relative share of the total deposits in insured depository institutions in the market ("market deposits") that FFBT would control,<sup>15</sup> the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines"),<sup>16</sup> and other characteristics of the market.

In the Edgar County banking market, the change in concentration levels and the concentration levels on consummation would exceed the threshold levels in the DOJ Bank Merger Guidelines. FFBT is the third largest insured depository institution in the Edgar County banking market, controlling deposits of approximately \$78.9 million, which represent

<sup>9</sup> See 12 U.S.C. § 1831u(g)(4).

<sup>10</sup> 12 U.S.C. § 1831u(b)(1). The Indiana Department of Financial Institutions has indicated that this transaction would comply with applicable Indiana law, and the Illinois Department of Financial & Professional Regulation has indicated that this transaction would comply with applicable Illinois law. See Ind. Code § 28-2-17-20 and 205 Ill. Comp. Stat. 5/21.1.

<sup>11</sup> See 12 U.S.C. § 1831u. As required by the Riegle-Neal Act, FFBT and Chrisman are both at least adequately capitalized (as defined in 12 U.S.C. § 1831o(b)(1)(B)), and the resulting bank would be well capitalized and well managed on consummation of the transaction. On consummation of the proposal, FFBT would control less than 10 percent of the total amount of deposits in insured depository institutions in the United States and less than 30 percent of the total amount of deposits in insured depository institutions in Illinois. See 12 U.S.C. § 1831u(b)(2)(A) and (B)(ii). All other requirements of section 102 of the Riegle-Neal Act would also be met on consummation of the proposal.

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

<sup>13</sup> 12 U.S.C. § 1828(c)(5)(B).

<sup>14</sup> The Edgar County banking market is defined as Edgar County, Illinois, minus Kansas Township.

<sup>15</sup> Deposit and market share data are based on data reported by insured depository institutions in the Federal Deposit Insurance Corporation's summary of deposits data as of June 30, 2014.

<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 anti-competitive 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. 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).

approximately 17.4 percent of market deposits. Chrisman is the fifth largest insured depository institution in the market, controlling deposits of approximately \$34.8 million, which represent approximately 7.7 percent of market deposits. On consummation of the proposal, FFBT would remain the third largest depository institution in the Edgar County banking market, controlling deposits of approximately \$113.6 million. The market concentration level in the Edgar County banking market as measured by the HHI would increase by 266 points, from 2369 to 2635, and the market share of the combined entity would represent approximately 25.0 percent of market deposits.

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 market.<sup>17</sup> Several factors indicate that the increase in concentration in the Edgar County banking market, as measured by the HHI and the market share of the combined organization, overstates the potential competitive effects of the proposal in the market. The Board has considered the competitive influence of one active thrift, First Bank & Trust, S.B. (“First Bank”), Paris, Illinois. First Bank has a ratio of commercial and industrial loans to assets that is comparable to the ratio for some commercial banks in the market; accordingly, the Board has concluded that deposits controlled by First Bank should be weighted at 100 percent in the market-share calculations.<sup>18</sup>

In addition, after consummation of the proposal, three other competitors would remain in the market, each controlling more than 15 percent of market deposits, including two with greater market share than the combined organization. The largest and second largest competitors in the market would control approximately 32.8 percent and 25.8 percent of market deposits, respectively, and the fourth largest competitor in the market would control approximately 16.4 percent of market deposits. The Board has concluded that this also mitigates, in part, the potential effects of the proposal.

The geographic locations of the applicant and target in the market also suggest that HHI calculations likely overstate the competitive effects of the proposal. FFBT’s branches are located in Paris township, which is located in the more populated, southern portion of the county where a significant majority of the market’s banking activity is centered. In contrast, Chrisman only operates in Ross township, which is in the less populated, northern part of the county.<sup>19</sup> Although the northern and southern parts of Edgar County are included in the same banking market, only a small number of Edgar County residents regularly commute between the two townships.<sup>20</sup> Therefore, there appear to be very few residents for whom the effective number of banking options would be reduced. The Board has concluded that these factors also mitigate the potential competitive effects of the proposal.

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<sup>17</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 Corp.*, 84 *Federal Reserve Bulletin* 129 (1998).

<sup>18</sup> The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks (*see, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984)) and has given their deposits 50 percent weighting to reflect their limited lending to small businesses relative to banks’ lending levels. However, the Board previously has indicated that it may consider the competitiveness of a thrift institution at a level greater than 50 percent of its deposits when appropriate if competition from the institution closely approximates competition from a commercial bank. *See, e.g., Banknorth Group, Inc.*, 75 *Federal Reserve Bulletin* 703 (1989). First Bank has a ratio of commercial and industrial loans to assets that is greater than the ratio for some thrift institutions that the Board has previously found to be full competitors of commercial banks.

<sup>19</sup> Chrisman’s branch in Ross township is located approximately 14 miles north of FFBT’s branches in Paris township.

<sup>20</sup> Although the percentage of residents that regularly commute between Paris township and Ross township is high enough that these townships are considered to be in the same banking market, the actual number of commuters from Ross township is low.

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

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 Edgar County banking market, or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

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

In reviewing a proposal under the Bank Merger Act, the Board considers the financial and managerial resources and future prospects of the institutions involved. In its evaluation of financial factors, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important.

FFBT is well capitalized and would remain so on consummation of the proposal. Chrisman would be merged into FFBT.<sup>21</sup> The asset quality, earnings, and liquidity of FFBT are consistent with approval, and FFBT appears to have adequate resources to absorb the costs of the proposal and to complete the integration of FFBT's and Chrisman's operations. Future prospects are considered consistent with approval. Based on its review of the record, the Board concludes that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of FFBT and Chrisman, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

FFBT and Chrisman are considered to be well managed. FFBT's existing risk-management program, and its board of directors and senior management, are considered to be satisfactory. The directors and senior executive officers of FFBT have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered FFBT's plans for implementing the proposal. FFBT is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. FFBT would operate the acquired branch of Chrisman under its existing risk-management policies, procedures, and controls, which are

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<sup>21</sup> Each outstanding share of Chrisman stock would be canceled and converted into a right-to-receive cash consideration. The anticipated aggregate cash consideration to be paid in connection with the merger is approximately \$4.3 million, subject to certain adjustments.

considered to be acceptable from a supervisory perspective. In addition, FFBT's and Chrisman's management has the experience and resources that should allow the combined organization to operate in a safe and sound manner, and FFBT is proposing to integrate Chrisman's existing management and personnel in a manner that augments FFBT's management.<sup>22</sup>

Based on all the facts of record, including FFBT's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of FFBT, as well as the records of effectiveness of FFBT and Chrisman in combatting money-laundering activities, are consistent with approval.

### **Convenience and Needs Considerations**

In acting on a proposal under the Bank Merger Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").<sup>23</sup> The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank merger proposals.

The Board has considered all the facts of record, including reports of examination of the CRA performance of FFBT and Chrisman, information provided by FFBT, and confidential supervisory information.

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

As provided in the CRA, the Board evaluates an institution's performance based on the CRA evaluation completed by that institution's primary regulator.<sup>24</sup> The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.<sup>25</sup> An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, onsite evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

*CRA Performance of FFBT.* FFBT received an overall rating of "satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of Chicago ("Reserve Bank"), in February 2012 ("FFBT Evaluation"). FFBT received "satisfactory" ratings on the Lending Test and the Community Development Test.<sup>26</sup>

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<sup>22</sup> FFBT's board of directors and senior management team would remain the same after consummating the merger.

<sup>23</sup> 12 U.S.C. § 2901 *et seq.*

<sup>24</sup> See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

<sup>25</sup> 12 U.S.C. § 2906.

<sup>26</sup> The FFBT Evaluation was conducted using Intermediate-Small Bank CRA Examination Procedures. The evaluation period for the bank's HMDA-reportable, small business, and small farm loans was from January 1, 2009, through December 31, 2010. The evaluation period for the bank's community development activities was from February 22, 2010, through February 27, 2012. The evaluation included full-scope reviews of FFBT's non-metropolitan assessment area (including all of Cass, Huntington, and Miami counties, and portions of

In evaluating the Lending Test, examiners found that a substantial majority of FFBT's HMDA-reportable, small business, and small farm loans were within the bank's assessment areas. Examiners noted that FFBT's loans reflected a reasonable dispersion among geographies of different income levels and that the bank's borrower distribution reflected reasonable penetration among individuals of different income levels. Examiners commented favorably on FFBT's loan-to-deposit ratio, which consistently exceeded that of its peers and closest competitors.

In evaluating the Community Development Test, examiners noted that FFBT's level of community development lending demonstrated adequate responsiveness to the needs of its assessment areas. Examiners noted that FFBT's staff participated in qualified community development services offering a wide variety of financial assistance to all portions of the bank's assessment areas. Examiners noted that FFBT made qualified community development investments that were used for a variety of purposes, including economic development and affordable housing. FFBT made qualified grants and donations to various charitable organizations that served the needs of the LMI populations.

*CRA Performance of Chrisman.* Chrisman received an overall rating of "satisfactory" at its most recent CRA performance examination by the Office of the Comptroller of the Currency, in December 2010 ("Chrisman Evaluation").<sup>27</sup> The Chrisman Evaluation focused on Chrisman's primary loan product, agricultural loans. Examiners found that Chrisman's loan-to-deposit ratio was reasonable based on the bank's size, financial condition, and the credit needs of the assessment area. Examiners also noted that the bank's distribution of loans reflected reasonable penetration among farms of different sizes.

#### *B. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization*

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

FFBT represents that the proposed transaction would provide Chrisman's customers with access to a broader network of branches and ATMs, enhanced products and services, and expanded financial resources and lending capacity. FFBT plans to expand the suite of products and services currently available to Chrisman's customers to include, among other things, various mobile banking services and securities and insurance brokerage services. FFBT also plans to offer additional credit services, including additional mortgage loans, farm lending, equipment leasing, and various government-sponsored loan programs.

#### *C. Conclusion on Convenience and Needs Considerations*

The Board has considered all the facts of record, including reports of examination and the CRA records of the institutions involved, information provided by FFBT, and confidential supervisory information. Based on the Board's assessment of the CRA and consumer compliance records of FFBT and Chrisman, its review of examination reports, and its consultations with other agencies, the Board concludes that the convenience and needs factor,

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Clinton, Fulton, Grant, Marshall, Pulaski, Starke, Wabash, and White counties, all of Indiana) and the Kokomo, Indiana Metropolitan Statistical Area ("MSA"). Limited-scope reviews were performed in the portion of the bank's assessment areas located within the Anderson MSA, Indianapolis-Carmel MSA, and Lafayette MSA, all in Indiana.

<sup>27</sup> The Chrisman Evaluation was conducted using Small Bank CRA Examination Procedures. The evaluation period was from August 5, 2005, through December 6, 2010. The evaluation examined three census tracts in Edgar County, Indiana, which included the cities of Paris and Chrisman.

including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

### **Financial Stability**

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended the Bank Merger Act to require the Board to consider a merger proposal’s “risk to the stability of the United States banking or financial system.”<sup>28</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 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>29</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 to the broader economy.<sup>30</sup>

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, FFBT would have approximately \$1.5 billion in consolidated assets and would not be likely to pose systemic risks. The Board generally presumes that a merger that involves an acquisition of less than \$2 billion in assets, or results in a firm with less than \$25 billion in consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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

### **Establishment of Branch**

FFBT has applied under section 9 of the FRA to establish a branch at the current location of Chrisman,<sup>31</sup> and the Board has considered the factors it is required to consider when reviewing an application under that section.<sup>32</sup> Specifically, the Board has considered FFBT’s financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investments in bank prem-

<sup>28</sup> Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1828(c)(5).

<sup>29</sup> Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

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

<sup>31</sup> Chrisman’s main office and only location is 147 West Monroe Avenue, Chrisman, Illinois 61924.

<sup>32</sup> 12 U.S.C. § 322; 12 CFR 208.6.

ises.<sup>33</sup> For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

### Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act and the FRA. Approval of the applications is specifically conditioned on compliance by FFBT with all the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

FFBT's acquisition of Chrisman may not be consummated before the 15th calendar day after the effective date of this order or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Reserve Bank acting pursuant to delegated authority.

By order of the Board of Governors, effective February 17, 2015.

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

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

## Orders Issued Under International Banking Act

Taiwan Cooperative Bank, Ltd.  
Taipei, Taiwan

### *Order Approving Establishment of a Branch FRB Order No. 2015-08 (February 20, 2015)*

Taiwan Cooperative Bank, Ltd., Taipei, Taiwan ("Taiwan Cooperative"), a foreign bank within the meaning of the International Banking Act of 1978 ("IBA"), has applied under section 7(d) of the IBA<sup>1</sup> to establish a state-licensed branch in New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Post*, August 27, 2014). The time for submitting comments has expired, and the Board has considered all comments received.

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<sup>33</sup> Upon consummation of the proposed transaction, FFBT's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

<sup>1</sup> 12 U.S.C. § 3105(d).

Taiwan Cooperative, with consolidated assets of approximately \$92.0 billion, is the second largest bank in Taiwan.<sup>2</sup> Taiwan Cooperative Financial Holding Co., Ltd., Taipei, owns all of Taiwan Cooperative's shares. Taiwan Cooperative offers a range of commercial, wealth management, and retail banking products. Outside Taiwan, Taiwan Cooperative operates branches in Manila, Sydney, Hong Kong, Suzhou, Tianjin, and Phnom Penh; a representative office in Beijing; and a subsidiary bank, United Taiwan Bank S.A., Brussels, Belgium. In the United States, Taiwan Cooperative operates a limited state-licensed branch in Los Angeles, California, and a state-licensed branch in Seattle, Washington.<sup>3</sup> Taiwan Cooperative is a qualifying foreign banking organization under Regulation K.<sup>4</sup>

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

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

With respect to supervision by home country authorities, the Federal Reserve previously has determined that Taiwan Cooperative is subject to comprehensive supervision on a con-

<sup>2</sup> Asset and ranking data are as of December 31, 2014, and are based on the exchange rate as of that date.

<sup>3</sup> As a limited branch, the Los Angeles branch is prohibited from accepting deposits from sources other than those permitted by section 25A of the Federal Reserve Act. Pursuant to section 25A of the Federal Reserve Act, a limited branch may receive deposits outside the United States and only such deposits within the United States that are incidental to or for the purpose of carrying out transactions in foreign countries. 12 U.S.C. § 615(a). Regulation K defines the extent of permissible deposit-taking activities of entities under section 25A of the Federal Reserve Act. *See* 12 CFR 211.6(a)(1).

<sup>4</sup> 12 CFR 211.23(a).

<sup>5</sup> 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to an affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. 12CFR211.24(c)(1)(ii). In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

<sup>6</sup> 12 U.S.C. § 3105(d)(3)-(4), 12 CFR 211.24(c)(2)-(3). The additional standards set forth in section 7 of the IBA and Regulation K include the following: (i) whether the bank's home country supervisor has consented to the establishment of the office; (ii) the financial and managerial resources of the bank; (iii) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (iv) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; (v) whether the bank has provided the Board with adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA and other applicable federal banking statutes; (vi) whether the bank and its U.S. affiliates are in compliance with U.S. law; (vii) the needs of the community; and (viii) the bank's record of operation. The Board also considers, in the case of a foreign bank that presents a risk to the stability of the United States, whether the home country of the bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12U.S.C. § 3105(d)(3)(E).

solidated basis by its home country supervisor, the Financial Supervisory Commission (“FSC”).<sup>7</sup> Taiwan Cooperative remains supervised by the FSC on substantially the same terms and conditions. Based on all the facts of record, it has been determined that Taiwan Cooperative continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

The additional standards set forth in section 7 of the IBA and Regulation K have also been taken into account. The FSC has no objection to the establishment of the proposed branch.

The Board has also considered the financial and managerial factors in the case. Taiwan’s risk-based capital standards are consistent with those established by the Basel Capital Accord (“Basel Accord”). Taiwan Cooperative’s capital is in excess of the minimum levels that would be required by the Basel Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Taiwan Cooperative are considered consistent with approval, and Taiwan Cooperative appears to have the experience and capacity to support the proposed branch. In addition, Taiwan Cooperative has established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general.

Taiwan has enacted laws and regulations to deter money laundering that are consistent with the Financial Action Task Force’s recommendations. Money laundering is a criminal offense in Taiwan, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Taiwan Cooperative has policies and procedures to comply with these laws and regulations, and its compliance is monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information on Taiwan Cooperative’s operations, the restrictions on disclosure in relevant jurisdictions in which Taiwan Cooperative operates have been reviewed. Taiwan Cooperative has committed to make available to the Board such information on its operations and on those of any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Taiwan Cooperative has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, it has been determined that Taiwan Cooperative has provided adequate assurances of access to any necessary information that the Board may request.

Section 173 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended the IBA to provide that the Board may consider, for a foreign bank that presents a risk to the stability of the United States financial system, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.<sup>8</sup> Information relevant to the standard regarding risk to the stability of the United States financial system has also been reviewed. In particular, consideration has been given to the absolute and relative size of Taiwan Cooperative in its home jurisdiction; the scope of Taiwan Cooperative’s activities, including the type of

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<sup>7</sup> *Taiwan Cooperative Bank*, 92 *Federal Reserve Bulletin* C201 (2006).

<sup>8</sup> Pub. L. No. 111-203, 124 Stat. 1376, 1440 (2010), codified at 12U.S.C. §3105(d)(3)(E).

activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability; and the framework in place for supervising Taiwan Cooperative in its home jurisdiction. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

The IBA establishes criteria that must be met before the Board can approve the establishment of a branch outside a foreign bank's home state. Taiwan Cooperative's home state is Washington. Under section 5(a)(2) of the IBA, as amended by section 104 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994,<sup>9</sup> a foreign bank, with the approval of the Board and the appropriate state supervisory agency, may establish and operate a state-licensed branch in any state outside its home state to the extent that a state-chartered bank with the same home state as the foreign bank could do so under section 18(d)(4) of the Federal Deposit Insurance Act ("FDI Act"). Section 18(d)(4), which previously authorized states to "opt-in" to interstate de novo branching, was amended by section 613 of the Dodd-Frank Act to permit insured state banks to establish interstate de novo branches nationwide.<sup>10</sup> It has been determined that all the other criteria referred to in section 5(a)(1) and 5(a)(3) of the IBA, including the criteria in section 7(d) of the IBA, have been met.<sup>11</sup> In view of all the facts of record, the Board is permitted to approve the establishment of an interstate de novo state-chartered branch by Taiwan Cooperative under section 5(a) of the IBA.

On the basis of all the facts of record, and subject to the commitments made by Taiwan Cooperative, as well as the terms and conditions set forth in this order, Taiwan Cooperative's application to establish a branch in New York is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.<sup>12</sup> Should any restrictions on access to information on the operations or activities of Taiwan Cooperative and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Taiwan Cooperative or its affiliates with applicable federal statutes, the Board may require termination of any of Taiwan Cooperative's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Taiwan Cooperative with the commitments made in connection with this application and with the conditions in this order.<sup>13</sup>

By order, approved pursuant to authority delegated by the Board, effective February 20, 2015.

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

<sup>9</sup> 12 U.S.C. § 3103(a)(2).

<sup>10</sup> Pub. L. No. 111-203, 124 Stat. 1376, 1614 (2010), codified at 12 U.S.C. § 1828(d)(4)(A)(i).

<sup>11</sup> Section 18(d)(4) of the FDI Act and section 5(a) of the IBA require that certain conditions of section 44 of the FDI Act be met in order for the Board to approve a de novo interstate state-chartered branch. *See* 12 U.S.C. § 1848(d)(4)(B) and 12 U.S.C. § 1303(a)(3)(C) (referring to sections 44(b)(1), 44(b)(3), and 44(b)(4) of the FDI Act, 12 U.S.C. § 1831u(b)(1), (b)(3), and (b)(4)). It has been determined that Taiwan Cooperative is in compliance with state filing requirements. Taiwan Cooperative was well capitalized as of the date the application was filed, and on consummation of this proposal, Taiwan Cooperative would continue to be well capitalized and well managed.

<sup>12</sup> 12 CFR 265.7(d)(12).

<sup>13</sup> The Board's authority to approve the establishment of branches parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York and its agent, the New York State Department of Financial Services, to license the proposed branch of Taiwan Cooperative in accordance with any terms and conditions that the New York State Department of Financial Services may impose.