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Legal Developments: Second Quarter, 2015

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Chemical Financial Corporation
Midland, Michigan

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2015–13 (April 20, 2015)

Chemical Financial Corporation ("Chemical"), Midland, a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to merge with Lake Michigan Financial Corporation ("Lake Michigan"), Holland, and thereby indirectly acquire its subsidiary banks, The Bank of Holland ("Bank of Holland"), Holland, and The Bank of Northern Michigan ("Bank of Northern Michigan"), Petoskey, all of Michigan.

In addition, Chemical's subsidiary state member bank, Chemical Bank, Midland, Michigan, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with Bank of Holland and Bank of Northern Michigan, with Chemical Bank as the surviving entity.[2] Chemical Bank also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the main offices and branches of Bank of Holland and Bank of Northern Michigan.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 7594 (2015)).[4] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General and a copy of the request has been provided to the Federal Deposit Insurance Corporation ("FDIC").

Chemical, with total consolidated assets of approximately $7.3 billion, is the 144th largest depository organization in the United States.[5] Chemical controls Chemical Bank and operates only in Michigan. Chemical Bank controls approximately $6.0 billion in deposits and

1 12 U.S.C. § 1842.
2 12 U.S.C. § 1828(c).
3 12 U.S.C. § 321. These locations are listed in Appendix A. Chemical will consolidate two branches of Bank of Northern Michigan with neighboring branches of Chemical Bank.
4 12 CFR 262.3(b).
5 Nationwide deposit, asset, and ranking data are as of December 31, 2014. In this context, insured depository institutions include commercial banks, savings banks, savings associations, and non-deposit trust companies.

is the eighth largest insured depository institution in the state, with deposits representing 3.4 percent of the total deposits in insured depository institutions in Michigan.[6]

Lake Michigan, with consolidated assets of approximately $1.2 billion, is the 593rd largest depository organization in the United States. Lake Michigan controls two banks, Bank of Holland and Bank of Northern Michigan, which operate only in Michigan. Lake Michigan is the 22nd largest insured depository organization in the state, controlling approximately $937 million in deposits representing 0.5 percent of the total deposits held by insured depository institutions in Michigan.

On consummation of the proposal, Chemical would become the 128th largest depository organization in the United States, with consolidated assets of approximately $8.7 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Chemical would control total deposits of approximately $6.9 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Michigan, Chemical would become the seventh largest depository organization, controlling deposits representing 3.9 percent of the total deposits held by insured depository institutions in the state.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[7] 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 communities to be served.[8]

Chemical and Lake Michigan have subsidiary depository institutions that compete directly in five banking markets in Michigan: Holland, Grand Rapids, Muskegon-Grand Haven, Petoskey, and Traverse City.

A. Competitive Effects in the Banking Markets

The Board has considered the competitive effects of the proposal in each of the banking markets in which Chemical and Lake Michigan compete. In particular, the Board has considered the number of competitors that would remain in the banking markets; the relative share of total deposits in insured depository institutions in the markets ("market deposits") that Chemical Bank would control upon consummation of the proposal;[9] 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

[6] State deposit, market share, and ranking data are as of June 30, 2014, as updated to reflect changes in ownership structure from mergers through March 6, 2015 (including Chemical's merger with Northwestern Bancorp, Inc., on October 31, 2014).

[7] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[8] 12 U.S.C. § 1828(c)(5)(B).

[9] Local deposit and market share data are as of June 30, 2014 (including deposits from Chemical's merger with Northwestern Bank on October 31, 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* 53 (1991).

Review guidelines ("DOJ Bank Merger Guidelines"), after consummation of the proposal;[10] and other characteristics of the markets.

Banking Markets Within Established Guidelines. Based on initial competitive screening data, consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Grand Rapids, Muskegon-Grand Haven, Petoskey, and Traverse City banking markets.[11] On consummation of the proposal, each of these four banking markets would remain moderately concentrated, and the changes in market concentrations would be within the DOJ Bank Merger Guidelines and Board precedent. In each of these banking markets, numerous competitors would remain.

Banking Market Warranting Special Scrutiny. The structural effects that consummation of the proposal would have on the Holland banking market[12] warrant a detailed review because, using initial competitive screening data, the concentration level on consummation would exceed the threshold levels in the DOJ Bank Merger Guidelines.

Using the initial screening data, Chemical is the sixth largest depository organization in the Holland banking market, controlling approximately $102.9 million in deposits, which represent 4.8 percent of market deposits. Lake Michigan is the largest depository organization in the market, controlling approximately $482.9 million in deposits, which represent 22.4 percent of market deposits. On consummation, the combined entity would be the largest depository institution in the Holland banking market, controlling approximately $585.8 million in deposits, which would represent approximately 27.2 percent of market deposits. The HHI in this market would increase by 214 points, from 1631 to 1845.

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 Holland banking market.[13] Factors indicate that the increase in concentration in the Holland banking market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market. In particular, six community credit unions exert a competitive influence in the Holland banking market. Each institution offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the relevant banking market.[14] The Board finds that these circumstances warrant including the

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

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

[12] The Holland banking market is defined as the Park, Holland, Zeeland, Olive, and Port Sheldon townships in Ottawa County and the Laketown, Fillmore, and Overisel townships in Allegan County, all of Michigan.

[13] 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).

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

deposits of these credit unions at a 50-percent weight in estimating market influence. This weighting takes into account the limited lending done by these credit unions to small businesses relative to commercial banks' lending levels.

This adjustment suggests that the resulting market concentration of the proposed transaction in the Holland banking market is less significant than would appear from the initial competitive screening data, which focused on commercial bank competitors. In particular, adjusting to reflect competition by other insured depository institutions in the market, the market concentration level in the Holland banking market as measured by the HHI would increase by 194, from a level of 1482 to 1676, and the market share of Chemical resulting from the transaction would increase in the market from 4.5 percent to 25.9 percent. After consummation of the proposal, the merged entity would continue to face competition from commercial bank competitors in the market, three of which have a market share greater than 15 percent.

B. Views of Other Agencies and Conclusion Regarding Competitive Factors

The DOJ conducted a review of the potential competitive effects of the merger and has advised the Board that consummation of the proposal 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 Holland 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 Factors

In reviewing a proposal under the BHC Act, the Bank Merger Act, and the FRA, the Board considers the financial and managerial resources and future prospects of the institutions involved. In its evaluation of 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, 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 their financial and managerial resources and the proposed business plan.

Chemical and Chemical Bank are both well capitalized and would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a cash and stock purchase, with a subsequent merger of the subsidiary depository institutions. Chemical expects to fund the transaction with cash and other liquid assets on hand. Chemical has the resources to fund the cash portion of the consideration. The asset quality, earnings, and liquidity of Chemical are consistent with approval, and Chemical appears to have adequate resources to absorb the costs of the proposal and to complete the integration of Chemical and Lake Michigan's operations. In addition, future prospects are considered consistent with approval. Based on its review of the record, the Board finds that Chemical 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 Chemical, Lake Michigan, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Chemical, the Board's supervisory experiences with Chemical and Lake Michigan and those of other relevant bank supervisory agencies with the organizations, and their records of compliance with applicable banking and anti-money-laundering laws.

Chemical and its subsidiary depository institution are each considered to be well managed. The directors and senior executive officers of Chemical have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered Chemical's plans for implementing the proposal. Chemical is devoting sufficient financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Chemical would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Chemical and Lake Michigan's management have the experience and resources that should allow the combined organization to operate in a safe and sound manner.

Based on all the facts of record, including Chemical'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 Chemical and Lake Michigan 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 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").[15] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[16] 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.[17]

The Board has considered all the facts of record, including reports of examination of the CRA performance of Chemical Bank, Bank of Holland, and Bank of Northern Michigan, information provided by Chemical, and confidential supervisory information.

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[15] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

[16] 12 U.S.C. § 2901(b).

[17] 12 U.S.C. § 2903.

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.[18] 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.[19] 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 Chemical Bank. Chemical Bank was assigned an overall "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago ("Reserve Bank") in August 2013 ("Chemical Bank Evaluation").[20] Chemical Bank received "outstanding" ratings for the each of the Lending Test, the Investment Test, and the Service Test.[21]

In evaluating the Lending Test, examiners noted that Chemical Bank originated a substantial majority of loans within its assessment areas and showed excellent responsiveness to credit needs throughout its assessment areas. Examiners also noted that the bank had an excellent record of serving the credit needs of very small businesses. Further, Chemical Bank's geographic distribution of loans reflected excellent penetration throughout the assessment areas. Examiners also noted that Chemical Bank is a leader in making community development loans inside its assessment areas and uses flexible and innovative lending practices in serving assessment area needs. Examiners noted that the dollar amount of Chemical Bank's lending increased by approximately 11.0 percent from the prior evaluation.

In evaluating the Investment Test, examiners found that Chemical Bank had provided an excellent level of qualified investments, donations, and grants. Examiners noted that the bank demonstrated excellent responsiveness to credit and community development needs. The bank also made extensive use of innovative and complex investments to support community development initiatives. Examiners noted that Chemical Bank's CRA-qualified investments increased by approximately 32.9 percent in number and 50.5 percent in dollars from the prior evaluation.

In evaluating the Service Test, examiners noted that Chemical Bank's branch location changes had improved the accessibility of its delivery systems, particularly to LMI geographies and LMI individuals. Examiners also found that the bank's delivery systems were readily accessible to the bank's geographies and individuals of different income levels in the assessment areas. Further, examiners highlighted that Chemical Bank was a leader in providing community development services throughout its assessment areas.

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[18] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

[19] 12 U.S.C. § 2906.

[20] The Chemical Bank Evaluation was conducted using the Large Institution CRA Examination Procedures. The Chemical Bank Evaluation reviewed home mortgage and small business lending data from January 1, 2011, through December 31, 2012. The evaluation period for community development loans, investments, and services was July 1, 2011, through August 26, 2013.

[21] The Chemical Bank Evaluation included a full-scope review of five assessment areas: the Grand Rapids-Wyoming Metropolitan Statistical Area ("MSA"); the Niles-Benton Harbor MSA; the Bay City MSA; the Kalamazoo-Portage MSA; and the North Central-Non-MSA. A limited-scope review was performed in the Battle Creek MSA; the Flint MSA; the Holland-Grand Haven MSA; the Saginaw-Saginaw Township North MSA; the South Bend-Mishawaka (Multi-State) MSA (Cass County, Michigan, only); the East-Non-MSA; the South-Non-MSA; and the West-Non-MSA.

CRA Performance of Bank of Holland. The Bank of Holland was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the FDIC in February 2012 ("Bank of Holland Evaluation"), with ratings of "satisfactory" for the Lending Test and the Community Development Test.[22]

In evaluating the Lending Test, examiners noted that the bank originated a majority of home mortgage loans and small business loans within its assessment areas.[23] Examiners also found that the bank's geographic distribution of home mortgage loans and small business loans reflected reasonable dispersion throughout its assessment areas. They further noted that the bank's distribution of loans to borrowers reflected reasonable penetration among individuals of different income levels, with room for improvement noted in penetrating businesses of different sizes. Further, examiners concluded that Bank of Holland's loan-to-deposit ratio was reasonable given its size, financial condition, and assessment areas' credit needs.

In evaluating the Community Development Test, examiners noted that Bank of Holland's level of community development performance demonstrated adequate responsiveness to the community development needs of its assessment areas through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of opportunities for community development in the bank's assessment areas.

CRA Performance of Bank of Northern Michigan. The Bank of Northern Michigan was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the FDIC in November 2013 ("Bank of Northern Michigan Evaluation"), with ratings of "satisfactory" for the Lending Test and the Community Development Test.[24]

In evaluating the Lending Test, examiners noted that the bank originated a majority of home mortgage loans and small business loans within its assessment area.[25] Examiners also found that the bank's geographic distribution of home mortgage loans and small business loans reflected reasonable dispersion throughout its assessment area, and the bank's distribution of loans to borrowers reflected reasonable penetration among individuals of different income levels and businesses of different sizes. Further, examiners concluded that Bank of Northern Michigan's loan-to-deposit ratio was reasonable given its size, financial condition, and assessment area credit needs. Examiners also noted that Bank of Northern Michigan did not receive any complaints about its performance in meeting assessment area credit needs.

In evaluating the Community Development Test, examiners noted that Bank of Northern Michigan's level of community development performance demonstrated adequate respon-

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[22] The Bank of Holland Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. The Lending Test included a review of home mortgage loans and small business loans for the period of January 1, 2010, through December 31, 2011. The Community Development Test reviewed all community development activities, including donations and investments, services, and any community development loans originated by Bank of Holland since its previous CRA evaluation, in March 2008.

[23] The Bank of Holland has two designated assessment areas. The first assessment area, the "Holland Assessment Area," consists of the whole of Ottawa County, Michigan, in the Holland-Haven MSA. The second assessment area, the "Grand Rapids Assessment Area," consists of southern portions of Kent County, Michigan, in the Grand Rapids-Wyoming MSA.

[24] The Bank of Northern Michigan Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. The Lending Test included a review of home mortgage loans and small business loans for the period of January 1, 2012, through September 30, 2013. The Community Development Test reviewed all community development activities, including donations and investments, services, and any community development loans originated by Bank of Northern Michigan since its previous CRA evaluation, in August 2010.

[25] The Bank of Northern Michigan has one designated assessment area, which comprises Charlevoix, Emmet, Grand Traverse, and Leelanau counties, all of which are nonmetropolitan areas in Michigan.

siveness to the community development needs of its assessment area through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of opportunities for community development in the bank's assessment area.

Additional CRA Activities of Chemical Bank. Chemical Bank represents that it provides a comprehensive range of banking and related financial services to meet the needs of individuals, families, and businesses in the communities it serves. Chemical Bank states that it uses innovative and flexible lending practices designed to expand homeownership opportunities for LMI borrowers, such as FHA Mortgages, Rural Development Mortgages, and Veteran Administration Loans. In addition, Chemical Bank is involved in both the Michigan State Housing Development Authority's Property Improvement Program loans and the federal Neighborhood Impact Program rehab grants. Chemical Bank makes available to borrowers portfolio home lending products, which provide it greater flexibility in meeting the needs of LMI borrowers. Chemical also represents that it is a leader in community development lending and that it makes loans that address all four categories of community development, including affordable housing, economic development, stabilization and revitalization, and community services. In addition to its lending activities, Chemical Bank represents, it offers a number of retail products targeted at helping LMI customers.

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.

Chemical represents that the proposed transaction would strengthen the ability of the current offices of Bank of Holland and Bank of Northern Michigan to meet the convenience and needs of the communities they serve by leveraging the products and the managerial and financial resources of Chemical Bank. Chemical Bank currently has a rating of "outstanding" from its most recent CRA examination, and Chemical represents that it would bring its commitment to CRA and its resources to meet the convenience and needs of the communities currently served by Bank of Holland and Bank of Michigan, which both maintain "satisfactory" CRA ratings.

Chemical further represents that following the merger, the banking products and services of Bank of Holland and Bank of Northern Michigan would be shifted to Chemical Bank, which would continue to provide high-quality financial products to the customers and communities currently served by Bank of Holland and Bank of Northern Michigan. Bank of Holland and Bank of Northern Michigan have focused primarily on commercial lending for small and mid-sized businesses and on providing personal banking services to their owners and executives. Following the merger, consumers in the communities served by Bank of Holland and Bank of Northern Michigan would be able to take advantage of a broader array of personal banking products and services offered by Chemical Bank, including portfolio mortgage loans, consumer loans, and deposit accounts. Chemical also states that commercial lenders would be able to benefit from treasury management products and the higher lending limit of Chemical Bank following the merger. In addition, the customers of Bank of Holland and Bank of Northern Michigan would gain access to a broad range of trust and wealth-management products and services, which are not currently offered by either bank.

Chemical represents that it does not expect that Chemical Bank would discontinue any services or products currently offered by Bank of Holland or Bank of Northern Michigan. In instances where a product or service of Bank of Holland or Bank of Northern Michigan duplicates one offered by Chemical Bank, those accounts would be migrated to the Chemical Bank product.

Although Chemical plans to consolidate two of Bank of Northern Michigan's branches with nearby Chemical Bank branches following the merger, Bank of Holland and Bank of Northern Michigan customers nevertheless would benefit from having a larger network of banking offices throughout Michigan. Customers of Bank of Holland and Bank of Northern Michigan would be able to bank at any of Chemical Bank's branch offices in that extensive network, which would extend from Michigan's southernmost tier of counties to the tip of Michigan's Lower Peninsula.

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 Chemical, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of Chemical Bank, Bank of Holland, and Bank of Northern Michigan, 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 Act Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the BHC Act and the Bank Merger Act to require the Board to consider a proposal's "risk to the stability of the United States banking or financial system."[26]

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.[27] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[28]

The Board has considered information relevant to risks to the stability of the United States banking or financial system. After consummation of the proposed transaction, Chemical would have approximately $8.7 billion in consolidated assets and would not be likely to

[26] Sections 604(d) and (f) of the Dodd-Frank Act, Pub. L. No. 111-203, 123 Stat. 1376, 1601, codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

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

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

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 total 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

Chemical Bank has applied under section 9 of the FRA to establish branches at the current locations of Bank of Holland and Bank of Northern Michigan. The Board has assessed the factors it is required to consider when reviewing an application under that section.[29] Specifically, the Board has considered Chemical Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises.[30] 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 BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Chemical and Chemical Bank with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order or later than October 31, 2015, unless such period is extended for good cause by the Board or the Reserve Bank acting pursuant to delegated authority.

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

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

[29] 12 U.S.C. § 322; 12 CFR 208.6.

[30] In addition, upon consummation of the proposed transaction, Chemical Bank's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

Appendix A

Branches to Be Acquired by Chemical Bank

The Bank of Holland
1. 150 Central Avenue, Holland, Michigan 49423
2. 16930 Robbins Road, Suite 120, Grand Haven, Michigan 49417
3. 51 Ionia SW, Grand Rapids, Michigan 49503

The Bank of Northern Michigan
1. 406 Bay Street, Petoskey, Michigan 49770
2. 130 South Union, Traverse City, Michigan 49036

Appendix B

Chemical Bank/Bank of Holland/Bank of Northern Michigan Banking Markets in Michigan Consistent with Board Precedent and DOJ Bank Merger Guidelines

Bank	Rank	Amount of Deposits	Market Deposit Shares (percent)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Grand Rapids, Michigan – includes Kent County (excluding Oakfield and Spencer townships); Thornapple, Irving, Carlton, Yankee Springs, Rutland and Hastings townships in Barry County; Casanovia township in Muskegon County; Salem, Dorr and Leighton townships in Allegan County; Jamestown, Georgetown, Blendon, Allendale, Tallmadge, Polkton, Wright and Chester townships in Ottawa County, all of Michigan.						
Chemical Bank Pre-Consummation	6	820.4 mil.	5.8			
Lake Michigan (Bank of Holland)	17	146.8 mil.	1			
Chemical Bank Post-Consummation	5	967.2 mil.	6.8	1104	12	25
Muskegon-Grand Haven, Michigan – includes Muskegon County (excluding Casanovia township); Grand Haven, Spring Lake, Crockery and Robinson townships in Ottawa County, all of Michigan.						
Chemical Bank Pre-Consummation	11	30.4 mil.	1.4			
Lake Michigan (Bank of Holland)	14	14.0 mil.	0.7			
Chemical Bank Post-Consummation	11	44.4 mil.	2.1	1527	2	13
Petoskey, Michigan – includes Charlevoix County, Emmet County (excluding Bliss, Carp Lake and Wawatam townships); Burt, Toscorara, Mentor and Wilmot townships in Cheboygan County; Banks township in Antrim County, all of Michigan.						
Chemical Bank Pre-Consummation	10	56.3 mil.	4.7			
Lake Michigan (Bank of Northern Michigan)	2	196.6 mil.	16.5			
Chemical Bank Post-Consummation	1	252.9 mil.	21.2	1346	157	9
Traverse City, Michigan – includes Antrim County (excluding Banks township); Benzie County; Grand Traverse County; Kalkaska County; Leelanau County, evelopmentsall of Michigan.						
Chemical Bank Pre-Consummation	2	449.0 mil.	15.5			
Lake Michigan (Bank of Northern Michigan)	9	96.9 mil.	3.3			
Chemical Bank Post-Consummation	2	555.9 mil.	18.8	1308	104	14

Deposit data are as of June 30, 2014. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.

BB&T Corporation
Winston-Salem, North Carolina

Order Approving the Acquisition of a Bank Holding Company
FBR Order No. 2015–15 (June 3, 2015)

BB&T Corporation ("BB&T"), Winston-Salem, North Carolina, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to merge with The Bank of Kentucky Financial Corporation ("Kentucky Financial") and thereby acquire

[1] 12 U.S.C. § 1842.

The Bank of Kentucky, Inc. ("Kentucky Bank"), both of Crestview Hills, Kentucky. Following the proposed acquisition, Kentucky Bank, a nonmember bank, would be merged into BB&T's subsidiary nonmember bank, Branch Banking and Trust Company ("Branch Bank"), also of Winston-Salem.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (79 *Federal Register* 62141 (2014)).[3] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

BB&T, with consolidated assets of approximately $186.8 billion, is the 18th largest insured depository organization in the United States, controlling approximately $129.0 billion in consolidated deposits, which represent approximately 1.1 percent of the total amount of deposits of insured depository institutions in the United States. BB&T controls Branch Bank, which operates in Alabama, Florida, Georgia, Indiana, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Texas, Virginia, West Virginia, and the District of Columbia. Branch Bank is the third largest insured depository institution in North Carolina, controlling approximately $54.6 billion in deposits, and the fourth largest insured depository institution in Kentucky, controlling approximately $4.1 billion in deposits, which represent 16.1 and 5.8 percent, respectively, of the total deposits of insured depository institutions in those states.[4]

Kentucky Financial, with consolidated assets of approximately $1.9 billion, is the 395th largest depository organization in the United States, controlling approximately $1.6 billion in deposits, which represent less than 1 percent of nationwide deposits. Kentucky Financial controls Kentucky Bank, which operates in Kentucky and Ohio. Kentucky Bank is the 10th largest insured depository institution in Kentucky, controlling approximately $1.5 billion in deposits, which represent 2.2 percent of the total deposits of insured depository institutions in that state. In Ohio, Kentucky Bank is the 227th largest insured depository institution, controlling approximately $30.5 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, BB&T would remain the 18th largest depository organization in the United States, with consolidated assets of approximately $188.7 billion, which represent 0.9 percent of the total amount of assets of insured depository institutions in the United States. BB&T would control total deposits of approximately $130.7 billion, which represent 1.1 percent of the total amount of deposits of insured depository institutions in the United States. In Kentucky, BB&T would become the second largest depository organization, controlling deposits of approximately $5.7 billion, which represent 8 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 the home state of the bank holding company without regard to

2 The merger of Kentucky Bank into Branch Bank is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC") pursuant to section 18(c) of the Federal Deposit Insurance Act (the "Bank Merger Act"). 12U.S.C.§1828(c). The FDIC approved the bank merger on February 6, 2015.

3 12 CFR 262.3(b).

4 National asset and deposit data are as of December 31, 2014. State deposit data are as of June 30, 2014. In this context, insured depository institutions include commercial banks, savings banks, and savings and loan associations.

whether the transaction is prohibited under state law.[5] 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.[6] 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.[7]

For purposes of the BHC Act, the home state of BB&T is North Carolina, and Kentucky Financial's home state is Kentucky.[8] Kentucky Bank is also located in Ohio. BB&T is well capitalized and well managed under applicable law and has a satisfactory Community Reinvestment Act ("CRA") rating.[9] Kentucky has a five-year age requirement,[10] Ohio has no minimum age requirement,[11] and Kentucky Bank has been in existence for more than five years.

On consummation of the proposed transactions, BB&T would control 1.1 percent of the total amount of deposits in insured depository institutions in the United States. In addition, the combined organization would control approximately 8 percent of the total amount of deposits of insured depository institutions in Kentucky Financial's home state, Kentucky.[12] There are no other states in which BB&T and Kentucky Financial 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.[13]

Branch Bank and Kentucky Bank do not compete directly in any 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

[5] 12 U.S.C. § 1842(d)(1)(A).

[6] 12 U.S.C. § 1842(d)(1)(B).

[7] 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* 12U.S.C.§1841(o)(4)-(7).

[8] *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.

[9] 12 U.S.C. §§ 2901-2908. There are no state community reinvestment laws applicable to this case.

[10] Ky. Rev. Stat. Ann. § 286.3-920.

[11] Ohio Rev. Code Ann. § 1115.05.

[12] Kentucky imposes a 15-percent limit on the total amount of in-state deposits that a single banking organization may control. Ky. Rev. Stat. Ann. § 286.3-900.

[13] 12 U.S.C. § 1842(c)(1).

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

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under 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 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. 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.

BB&T and Branch 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 a cash and share exchange.[14] The asset quality, earnings, and liquidity of Branch Bank and Kentucky Bank are consistent with approval, and BB&T 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. The Board has reviewed the examination records of BB&T, Kentucky Financial, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by BB&T, the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking and anti-money-laundering laws.

BB&T, Kentucky Financial, and their subsidiary depository institutions are each considered to be well managed. BB&T's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of BB&T have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered BB&T's plans for implementing the proposal. BB&T has a demonstrated record of successfully integrating organizations into its operations and risk-management systems following acquisitions. BB&T has conducted comprehensive due diligence and is devoting significant financial and other resources to develop a detailed integration plan and timeline for this proposal. BB&T would implement its existing compliance and risk-management systems and programs at the combined organization, and these

[14] As part of the proposed transaction, each share of Kentucky Financial common stock would be converted into a right to receive cash and BB&T common stock, based on an exchange ratio. BB&T has the financial resources to fund the transaction.

are considered acceptable from a supervisory perspective. In addition, BB&T's and Kentucky Financial's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and BB&T plans to integrate Kentucky Financial's existing management and personnel in a manner that augments BB&T's management.[15]

Based on all the facts of record, including BB&T's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of BB&T and Kentucky Financial in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served. In its evaluation of the effect of the proposal on the convenience and needs of the communities to be served, the Board considers whether there is a reasonable basis to conclude that the relevant institutions are helping to meet the credit needs of the communities they serve and whether the proposal would result in public benefits. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.[16] The Board also considers the banks' overall compliance record and recent fair lending examinations, the supervisory views of examiners, other supervisory information, and comments received on the proposal. Other information the Board may consider includes the institution's business model, the institution's marketing and outreach plans, the development and monitoring of business goals and initiatives, and the organization's plans following consummation.

The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[17] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods.[18] In addition to complying with the requirements of the CRA, fair lending and other consumer protection laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or other prohibited bases.

The Board also considered information provided by the public during the comment period. The Board received one comment from a commenter who objected to the proposal on the basis of Branch Bank's and Kentucky Bank's lending records to LMI and minority borrowers, based on 2013 data reported by the banks under the Home Mortgage Disclosure Act ("HMDA"), for Branch Bank in the Louisville, KY-IN ("Louisville") Multi-State Metropolitan Statistical Area ("MSA"), Dallas-Plano-Irving ("Dallas") MSA, and Houston-Sugarland-Bay Town ("Houston") MSA assessment areas; and for Kentucky Bank in

[15] For instance, in order to provide BB&T's existing management with further insight into serving the needs of the communities currently served by Kentucky Financial, BB&T would invite certain representatives from Kentucky Financial to serve on two new advisory bodies: a regional advisory board and a Northern Kentucky Community Development Committee.

[16] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

[17] 12 U.S.C. § 2901(b).

[18] 12 U.S.C. § 2903.

the Cincinnati-Middletown ("Cincinnati") Multi-State MSA assessment area. The commenter also criticized Branch Bank's branch distribution in LMI areas in the Dallas MSA and Houston MSA assessment areas.

HMDA data reflecting certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas can raise concern about the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly and equitably. However, other information critical to an institution's credit decisions is not available from HMDA data.[19] Consequently, HMDA disparities must be evaluated in the context of other information regarding the lending record of an institution.

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.[20] 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.[21] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of Branch Bank. Branch Bank was assigned an overall "Outstanding" rating by the FDIC at its most recent CRA performance evaluation, as of May 19, 2014 ("Branch Bank Evaluation").[22] Branch Bank received "Outstanding" ratings for the Investment Test and the Service Test and a "High Satisfactory" rating for the Lending Test. Examiners found that Branch Bank made an excellent level of qualified investments and extensive use of innovative investments to support community development initiatives. The Board has consulted with the FDIC regarding the Branch Bank Evaluation.

In evaluating the Lending Test, examiners found that Branch Bank's overall lending levels reflected good responsiveness to assessment area credit needs and that Branch Bank made a high percentage of its loans within its assessment areas, reflecting adequate penetration. Examiners also found that the bank's distribution of borrowers reflected good penetration among retail customers of different income levels and business customers of different sizes. Examiners noted that Branch Bank exhibited a good record of serving the credit needs of the most economically disadvantaged areas of its assessment areas, LMI individuals, and

19 Other data relevant to a fair lending analysis could include, for example, information on credit history problems, debt-to-income ratios, and loan-to-value ratios. Moreover, HMDA data 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.

20 *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

21 12 U.S.C. § 2906.

22 The Branch Bank Evaluation was released to the public on June 1, 2015, and was conducted using Large Bank CRA Examination Procedures. Examiners reviewed loans reported, pursuant to HMDA and CRA data collection requirements (geographic distribution and borrower distribution), in 2011, 2012, and 2013. The evaluation period for community development lending, innovative and flexible practices, qualified investments, and community development services was January 1, 2011, through December 31, 2013. The branch office distribution was as of December 31, 2013. The Branch Bank Evaluation covered Branch Bank's 108 assessment areas located in 11 states and five multi-state MSAs: North Carolina, Alabama, Georgia, Florida, Kentucky, Maryland, South Carolina, Tennessee, Texas, Virginia, West Virginia, the Charlotte, NC-SC ("Charlotte") Multi-State MSA, the Columbus, GA-AL ("Columbus") Multi-State MSA, the Kingsport-Bristol, TN-VA ("Kingsport") Multi-State MSA, the Louisville Multi-State MSA, and the Washington, DC-MD-VA-WV ("Washington DC") Multi-State MSA. The Branch Bank Evaluation included a full-scope review of 48 of these assessment areas, including all five multi-state MSAs, which captured approximately 70 percent or more of the total lending and deposit activity for each state.

very small businesses. Examiners also noted that the bank was a leader in making community development loans during the review period. Branch Bank's community development loans were made for a variety of purposes, including financing affordable housing for LMI individuals, promoting economic development by partnering with community development organizations, and supporting various statewide lending consortiums. In addition, examiners noted that Branch Bank offered affordable housing loans through several federal and state government programs.

In the Louisville Multi-State MSA assessment area, an area on which the commenter focused, examiners rated Branch Bank's Lending Test performance as "Outstanding," noting that its lending levels reflected excellent responsiveness to assessment area credit needs. The geographic distribution of the bank's home mortgage and small business lending was good. Branch Bank's borrower distribution among retail customers of different income levels was excellent and among businesses of different sizes was good. Examiners noted that the bank made extensive use of innovative and flexible lending practices, and that Branch Bank was a leader in making community development loans in the assessment area.

In Texas, another area on which the commenter focused, Branch Bank was assigned an overall "Satisfactory" rating by the FDIC. In the Dallas MSA assessment area, examiners noted that Branch Bank's lending reflected good responsiveness to assessment area credit needs. The geographic distribution of the bank's home mortgage lending was good, and its small business loans reflected excellent penetration throughout the assessment area. Branch Bank's distribution of HMDA loans among individuals of different income levels and among businesses of different sizes was adequate. Examiners noted that the bank made extensive use of innovative and flexible lending practices and that Branch Bank originated a relatively high level of community development loans in the assessment area. Branch Bank also funded a small-business retail facility in a low-income census tract, providing for economic development and job creation. In the Houston MSA assessment area, examiners noted that Branch Bank's lending reflected adequate responsiveness to assessment area credit needs. The geographic distribution of the bank's home mortgage and small business lending was adequate. Examiners noted that the bank made extensive use of innovative and flexible lending practices and that Branch Bank originated a relatively high level of community development loans in the assessment area.

In evaluating the Investment Test, examiners found that Branch Bank had an excellent level of qualified community development loan investments and grants, and its volume of qualified investments was significant. The bank extended qualified investments, often in a leadership position and not routinely provided by private investors, at a high level throughout its assessment areas. Examiners noted that Branch Bank's investment test performance was "Outstanding" throughout a significant number of states and multi-state MSAs, and its performance was rated "High Satisfactory" in several others.[23] Examiners also found the bank to be a leader in affordable housing tax credit investments and that the bank provided innovative investments that exhibited excellent responsiveness to assessment area needs. Examiners also noted that Branch Bank's level of qualified investments relative to its operations in the Houston MSA and Louisville Multi-State MSA assessment areas was excellent and good, respectively.

[23] Examiners found that the bank's performance under the Investment Test was "Outstanding" in North Carolina, Virginia, Florida, South Carolina, Georgia, Texas, WestVirginia, and Alabama, as well as in the multistate MSAs of Kingsport and Columbus. Examiners also noted Branch Bank's investment test performance was "High Satisfactory" in Maryland, Tennessee, and Kentucky, as well as in the multi-state MSAs of Washington DC, Charlotte, and Louisville.

In evaluating the Service Test, examiners noted that Branch Bank's overall branch distribution in Florida, Georgia, North Carolina, Tennessee, and Virginia provided a good level of accessibility to LMI individuals and areas and that its branch distribution in West Virginia provided excellent accessibility to LMI areas.[24] Examiners further noted that in the substantial majority of the remaining assessment areas, the branch distribution, by geography, was at least adequate. Examiners also found that the bank offered several services designed to meet the convenience and needs of the assessment areas, particularly for LMI geographies and individuals. Examiners indicated that the bank was a leader in providing community development services throughout its assessment areas. Examiners noted that bank management and employees provided financial advice and assistance to many community development organizations.

In the Dallas MSA assessment area, an area on which the commenter focused, Branch Bank operates five of its 25 branches in LMI tracts, and an additional 12 branches are adjacent to or within one mile of an LMI tract. Seven of those branches are located in tracts in which a majority of the population are minority individuals ("majority minority tracts"). Of the 13 branches Branch Bank operates in the Houston MSA assessment area, three are located in an LMI tract, and an additional five branches are located adjacent to or within one mile of an LMI tract. Six of those branches are located in majority minority tracts. In the Louisville Multi-State MSA assessment area, eight of the 27 Branch Bank branches are located in an LMI tract, and an additional nine branches are adjacent to or within one mile of an LMI tract. Five of those branches are located in majority minority tracts.

In addition, Branch Bank asserted that it has a strong record of community development lending and investment to meet community reinvestment needs. Branch Bank stated that it continued to make a high level of community development loans and qualified community development investments to the communities it serves. In addition, Branch Bank indicated that its associates have provided more than 1,850 qualified community development service activities within their local communities and that it has employed community development specialists to serve as liaisons between the community and the bank to facility community development loans, services, and investment opportunities throughout its footprint.

CRA Performance of Kentucky Bank. Kentucky Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC in November 2013 ("Kentucky Bank Evaluation"). Kentucky Bank received a "High Satisfactory" rating for the Lending Test and "Low Satisfactory" ratings for both the Investment Test and the Service Test.[25]

In evaluating Kentucky Bank's performance under the Lending Test, examiners concluded that Kentucky Bank's lending levels reflected good responsiveness to its assessment area's credit needs. Examiners found that a high percentage of Kentucky Bank's loans were originated in its assessment area, and the geographic distribution of its loans reflected good

[24] Examiners noted that Branch Bank demonstrated an "Outstanding" record regarding the Service Test in the Louisville Multi-State MSA, among other state and multi-state MSAs. As of December 31, 2013, the bank operated 870 branches in North Carolina, Virginia, and Florida, together accounting for approximately 48 percent of the bank's branches. Consequently, examiners placed more weight on the institution's performance in North Carolina, Virginia, and Florida.

[25] The Kentucky Bank Evaluation was prepared using the interagency evaluation procedures for large institutions. The Lending Test included a review of all home mortgage loans and small business loans reported under regulatory requirements for 2011 and 2012 and a review of all community development loans from May 23, 2011, through November 18, 2013. The Investment Test and the Service Test covered the period from May 23, 2011, through November 18, 2013. The Kentucky Bank Evaluation included a full-scope review of the Cincinnati Multi-State MSA, including Boone, Campbell, Kenton, Grant, Gallatin, and Pendleton counties, all of Kentucky, and Hamilton County, Ohio.

penetration throughout its assessment area. Examiners noted that Kentucky Bank's distribution of borrowers reflected good penetration among retail customers of different income levels and business customers of different sizes. Examiners also found that Kentucky Bank made a relatively high level of community development loans and that it made use of innovative and flexible lending practices in order to serve the credit needs of its assessment area.

In evaluating Kentucky Bank's performance under the Investment Test, examiners found that Kentucky Bank had an adequate level of qualified community development investments and grants. Examiners noted that Kentucky Bank exhibited adequate responsiveness to credit and community economic development needs.

In evaluating Kentucky Bank's performance under the Service Test, examiners noted that Kentucky Bank's delivery systems were reasonably accessible to essentially all portions of its assessment area and were not adversely affected by the opening and closing of branches. Examiners also noted that Kentucky Bank provided an adequate level of community development services throughout its assessment area, and that services do not vary in a way that inconveniences portions of its assessment area, particularly LMI geographies and individuals.

BB&T's Fair Lending Program. The Board has consulted with the FDIC, which is the appropriate federal banking agency for Branch Bank, regarding its evaluation of compliance with fair lending laws and regulations by Branch Bank. In January 2015, the FDIC approved an application by Bank Branch to acquire 42 Citibank branches in Texas under the Bank Merger Act. The commenter in this case raised similar allegations in that application, criticizing BB&T's lending record and branch distribution in the Dallas and Houston MSAs. As a result of that comment, the FDIC investigated BB&T's lending activity and branch distribution in the Dallas and Houston MSAs as part of its review of BB&T. During their investigation of those MSAs, FDIC examiners reviewed BB&T's policies and procedures, conducted an analysis of the HMDA and commercial lending data, and conducted a comparative file review. Following its review, the FDIC approved the acquisition of the 42 Citibank branches on January 30, 2015. In connection with the approval, the FDIC directed Branch Bank to develop and submit a strategic plan. Branch Bank submitted a strategic plan to the FDIC, which provided for a semi-annual review of Branch Bank's enterprise-wide branching strategy, lending distributions, and marketing efforts.[26] The FDIC deemed the plan acceptable on February 3, 2015, and, subsequently, approved the merger of Kentucky Bank into Branch Bank.

BB&T has established policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. BB&T's Fair Lending Compliance Group is responsible for engaging in an ongoing risk evaluation for BB&T's lending and operational lines of business. The Fair Lending Compliance Group's ongoing risk evaluation includes a list of risk indicators, such as the consideration of consumer and regulatory complaints. BB&T provides online fair lending training for staff, including, but not limited to, underwriters, loan officers, and customer service and collection personnel, with information related to the various aspects and nuances of current fair lending legislation.

BB&T reviews its marketing programs and campaigns for appropriate coverage and inclusion for minority as well as non-minority oriented media and geographies. Prior to issuance, BB&T requires a fair lending review and signoff of all advertising and marketing programs and material to confirm compliance with applicable federal and state fair lending

[26] As required by the FDIC, the plan was developed in the context of available aggregate and peer data and demographics and safe and sound lending considerations and evaluated performance in majority minority census tracts, as well as performance among individual racial and ethnic groups.

laws. BB&T's Fair Lending Compliance Risk Managers conduct annual monitoring for each lending line of business. BB&T performs additional reviews for products, promotions, and other bank operations to confirm fair lending compliance. BB&T performs regular fair lending analyses, including transactional and pricing regression, minority penetration, and population data.

Branch Bank argues that, in the Louisville Multi-State MSA assessment area, the percentage of mortgage loan applications received from and originated to minority borrowers significantly exceeds those of aggregate lenders in 2013.[27] Branch Bank stated that it is a recent entrant to both the Dallas and Houston banking markets and received relatively few applications for mortgage loans. Branch Bank represents that it has developed plans to increase outreach efforts to strengthen mortgage loan activity to LMI and minority borrowers and communities in the Dallas MSA and Houston MSA assessment areas and would also do so in the Cincinnati Multi-State MSA, the banking market served by Kentucky Bank. Branch Bank stated that to assist a broader scope of borrowers to gain access to mortgage credit, it offers mortgage loans with flexible features. Branch Bank also states that it is an active small business lender throughout the Louisville Multi-State MSA, Dallas MSA, and Houston MSA assessment areas.

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. BB&T represents that the proposal would benefit customers of all profiles in the communities it serves by offering an increased number of products and services. Branch Bank offers various products that are unavailable through Kentucky Bank, such as deposit products designed for youth and senior citizens, prepaid accounts with debit cards, community checking for civic and nonprofit organizations, and online loan applications and loan fulfilment, among other products. Additionally, Kentucky Bank customers would have access to these additional financial products through a significantly larger network of financial centers and ATMs.

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, the approval by the FDIC of the underlying Bank Merger Act application and the FDIC's fair lending review of Branch Bank, information provided by BB&T, confidential supervisory information, and the public comment on the proposal. Based on its consideration of that information, the Board believes that there is a reasonable basis on which to conclude that BB&T is helping to meet the credit needs of the communities it serves and that the proposal would result in public benefits, and concludes that the convenience and needs factor 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."[28]

[27] The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a particular MSA or metropolitan division. In this context, aggregate lending is considered an indicator of the lending opportunities in the geographic area in which the bank is located.

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

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

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves the acquisition of approximately $1.9 billion in total assets. Upon consummation, BB&T would have $188.7 billion in total assets and would not be likely to pose systemic risks. The Board generally presumes that a proposal that involves an acquisition of less than $2 billion in assets, or that 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 determines 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.[31] 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 BB&T 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

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

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

[31] The commenter requested that the Board hold public hearings on the proposal. Section3(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. 12CFR225.16(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.

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 Richmond, acting under delegated authority.

By order of the Board of Governors, effective June 3, 2015.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Sterling Bancorp
Montebello, New York

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2015–16 (June 15, 2015)

Sterling Bancorp ("Sterling"), Montebello, New York, a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire Hudson Valley Holding Corporation ("Hudson Valley"), and thereby indirectly acquire its subsidiary bank, Hudson Valley Bank, National Association ("Hudson Valley Bank"), both of Yonkers, New York. Following the proposed acquisition, Hudson Valley Bank would be merged into Sterling's subsidiary bank, Sterling National Bank ("Sterling Bank"), Montebello, New York.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (79 *Federal Register* 74091 (2014)).[3] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Sterling, with consolidated assets of approximately $7.4 billion, is the 140th largest insured depository organization in the United States, controlling approximately $5.2 billion in deposits.[4] Sterling controls Sterling Bank, which operates in New York and New Jersey. Sterling Bank is the 25th largest insured depository institution in New York, controlling deposits of approximately $5.0 billion, which represent less than 1 percent of the total deposits in insured depository institutions in that state.[5]

Hudson Valley, with consolidated assets of approximately $3.1 billion, is the 263rd largest insured depository organization in the United States, controlling approximately $2.8 billion in deposits. Hudson Valley controls Hudson Valley Bank, which operates only in New

1 12 U.S.C. § 1842.

2 The merger of Hudson Valley Bank into Sterling 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).

3 12 CFR 262.3(b).

4 Asset and nationwide deposit-ranking data are as of December 31, 2014, unless otherwise noted.

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

York. Hudson Valley Bank is the 38th largest insured depository institution in New York, controlling less than 1 percent of the total deposits in insured depository institutions in that state.

On consummation of the proposal, Sterling would become the 108th largest depository organization in the United States, with consolidated assets of approximately $10.6 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Sterling would control total deposits of approximately $8.0 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In New York, Sterling would become the 21st largest depository organization, controlling deposits of approximately $7.8 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

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

Sterling and Hudson Valley have subsidiary depository institutions that compete directly in the Metropolitan New York City banking market ("New York City market").[8] 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 Sterling would control upon consummation of the proposal;[9] 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"), after consummation of the proposal;[10] and other characteristics of the market.

[6] 12 U.S.C. § 1842(c)(1).

[7] *Id.*

[8] The New York City market is defined as Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties, all in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Mercer, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren counties, all in New Jersey; Monroe and Pike counties, both in Pennsylvania; Fairfield County, Connecticut; Bridgewater, Canaan, Cornwall, Kent, New Milford, North Canaan, Roxbury, Salisbury, Sharon, Warren, and Washington townships, including the cities of Cornwall Bridge, Falls Village, Lakeville, Marble Dale, New Preston, Salisbury, and Washington Depot, all in Litchfield County, Connecticut; and Ansonia, Beacon Falls, Derby, Milford, and Seymour townships in New Haven County, Connecticut.

[9] 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).

[10] 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 for the New York City market. On consummation of the proposal, the New York City market would remain moderately concentrated, as measured by the HHI. There would be only a minimal change in the HHI, and 251 competitors would remain in the market.[11]

The DOJ has advised the Board that consummation of the proposal 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 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 New York City banking market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under 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 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. 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.

Sterling and Sterling Bank are both well capitalized and would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a share exchange, with a subsequent merger of the subsidiary depository institutions.[12] The asset quality, earnings, and liquidity of Sterling Bank and Hudson Valley Bank are consistent with approval, and Sterling 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

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..

[11] Sterling operates the 27th largest depository institution in the New York City market, which includes portions of New Jersey. Sterling controls approximately $5.1 billion in deposits in this market, which represent less than 1 percent of market deposits. Hudson Valley operates the 37th largest depository institution in the same market, controlling approximately $2.8 billion in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Sterling would become the 22nd largest depository institution in the market, controlling approximately $8.0 billion in deposits, which represent less than 1 percent of market deposits. The HHI for the New York City market would increase by one point to 1371.

[12] As part of the proposed transaction, each share of Hudson Valley common stock would be converted into a right to receive Sterling common stock, based on a fixed exchange ratio. Sterling has the financial resources to fund the exchange.

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 Sterling, Hudson Valley, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Sterling, the Board's supervisory experiences with Sterling and Hudson Valley and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking and anti-money-laundering laws.

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

The Board also has considered Sterling's plans for implementing the proposal. Sterling is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Sterling would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Sterling's and Hudson Valley's management have the experience and resources that should allow the combined organization to operate in a safe and sound manner, and Sterling plans to integrate Hudson Valley's existing management and personnel in a manner that augments Sterling's management.[13]

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

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the convenience and needs of the communities to be served. In its evaluation of the effect of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve and whether the proposal would result in public benefits. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[14] The Board also considers the banks' overall compliance record, recent fair lending examinations and other supervisory assessments; the supervisory views of examiners; other supervisory information; and comments received on the proposal. Other information the Board may consider includes the institu-

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[13] On consummation, Sterling will increase from 13 to 15 the number of seats on its board of directors. Eleven directors currently serving on Sterling's board of directors and four directors nominated by Hudson Valley's board of directors will serve on the board of the combined organization. The Chief Executive Officer and the Chief Financial Officer of Sterling will continue to serve in their roles following the merger. In addition, Sterling Bank will establish a paid advisory board, comprised of other members of Hudson Valley's board of directors who wish to serve and other individuals appointed by Sterling. The advisory board will monitor Sterling Bank's business in certain markets to support the board of directors of Sterling and Sterling Bank.

[14] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

tion's business model, the institution's marketing and outreach plans, its development and monitoring of business goals and initiatives, and the organization's plans following consummation.

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,[15] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods.[16] In addition to complying with the requirements of the CRA, fair lending and other consumer protection laws require all lending institutions to provide applicants with equal access to credit, regardless of the applicant's race, ethnicity, or certain other characteristics.

The Board received two comments from a single commenter who objected to the proposal principally on the basis of Sterling Bank's record of extending home mortgage credit to minority individuals in the New York-Wayne-White Plains, New York-New Jersey Metropolitan Division ("New York City MSA") and the Nassau-Suffolk Metropolitan Division ("Nassau-Suffolk MD"), as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")[17] for 2013. The commenter expressed concerns that, based on 2013 HMDA data, Sterling Bank was not meeting the credit needs of minority individuals in the communities served by the bank.[18] The commenter also contended that Sterling Bank's HMDA data are "irregular." The commenter noted that the bank reported three withdrawn and three incomplete applications for refinance loans to African Americans in the New York City MSA and no denials, suggesting that the bank is prescreening minority borrowers.[19]

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly and equitably. However, other information critical to an institution's credit decisions is not available from HMDA data.[20] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

The Board has considered all the facts of record, including reports of examination of the CRA performance of Sterling Bank and Hudson Valley Bank, the fair lending and compliance records of both banks, the supervisory views of the OCC, confidential supervisory

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[15] 12 U.S.C. § 2901(b).

[16] 12 U.S.C. § 2903.

[17] 12 U.S.C. § 2801 *et seq.*

[18] The commenter also alleged that Hudson Valley Bank was not meeting the credit needs of minorities in its communities, based on 2013 HMDA data. Sterling represented that Hudson Valley Bank is primarily a commercial lender and does not have a material mortgage program. Mortgage loans represented approximately 14 percent of the bank's overall lending portfolio as of December 31, 2014. Sterling represented that Hudson Valley Bank makes only a modest number of in-house mortgage originations.

[19] Sterling asserted that three loan applications were withdrawn at the prospective borrowers' request because they did not wish to continue the transaction and that the three other applications were deemed incomplete because the prospective borrowers did not provide the requested property, asset, or income documentation needed by the bank to make a lending decision.

[20] Other data relevant to a fair lending analysis could include, for example, 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). Moreover, HMDA data 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.

information, information provided by Sterling, and the public comments received on the proposal.

A. Sterling Bank's Business and Response to Comments

Sterling Bank is primarily a commercial lender and does not have a large residential mortgage loan operation. Residential mortgage loans represented approximately 11 percent of the bank's overall lending portfolio in 2014.[21] Sterling acknowledged that the bank's percentage of HMDA-reportable mortgage loans to African American and Hispanic borrowers was lower than the aggregate's percentage in the New York City MSA in 2013.[22] However, Sterling argued that this lower percentage was due to the bank's focus on commercial lending and the highly competitive nature of the New York City market. Sterling indicated that, as a commercial lender, Sterling Bank provides home mortgage loans primarily as an accommodation to its commercial lending customers, originating most of its mortgages in response to customer inquiries in connection with commercial lending relationships. Sterling Bank did not engage in significant marketing efforts for residential mortgage lending in 2013.

B. Records of Performance under 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.[23] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[24] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; the geographic distribution of such loans, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; the distribution of such loans based on borrower characteristics, including the number and amount

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[21] Sterling's commercial lending, including commercial mortgage and commercial and industrial loans, represented in the aggregate approximately 84 percent of Sterling Bank's overall lending portfolio in 2014.

[22] The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a given market. In this context, aggregate lending is considered a potential indicator of the lending opportunities in the geographic area in which the bank is located.

[23] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

[24] 12 U.S.C. § 2906.

of home mortgage loans to low-, moderate-, middle-, and upper income individuals;[25] the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies. Consequently, the Board considers the overall CRA rating and the rating on the lending test to be important indicators, when taken into consideration with other factors, in determining whether a depository institution is helping to meet the credit needs of its communities.

CRA Performance of Sterling Bank. Sterling Bank was assigned an overall rating of "Satisfactory" by the OCC at its most recent CRA performance evaluation as of January 2014 ("Sterling Bank Evaluation").[26] Sterling Bank received "Low Satisfactory" ratings for both the Lending Test and Investment Test and a "High Satisfactory" rating for the Service Test. Examiners found that Sterling Bank's lending levels reflected adequate responsiveness to the credit needs of its assessment area, that it engaged in a relatively high level of community development lending involving loans that had an affordable housing or other community development purpose, and that it made a substantial majority of its home mortgage loans and small loans to businesses and farms within its assessment area. The Board has consulted with the OCC regarding the Sterling Bank Evaluation.

In evaluating the Lending Test, examiners found that Sterling Bank's geographic distribution of loans, including home mortgage loans and small business loans, reflected adequate penetration throughout the assessment area. The bank's penetration of loans among borrowers of different income levels and businesses of different sizes was adequate, although examiners noted some weaknesses with respect to certain types of lending. Examiners found that Sterling Bank made a relatively high level of community development loans for a variety of purposes, including the construction and development of affordable housing units for LMI individuals and senior citizens, the promotion of economic development and job creation through Small Business Administration ("SBA") programs, and the stabilization of LMI areas by financing local businesses. Examiners noted that Sterling Bank had a good record of serving the credit needs of the most economically disadvantaged areas in its assessment area, LMI individuals, and small businesses.

In evaluating the Investment Test, examiners found Sterling Bank to have an adequate level of qualified community development investments and grants, although examiners noted that performance could be improved in certain areas. The bank exhibited adequate responsiveness to credit and community economic development needs in the form of affordable housing, and occasionally used innovative and/or complex investments to support commu-

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

[26] The Sterling Bank Evaluation was conducted using the Large Institution CRA Examination Procedures. Examiners reviewed HMDA-reportable and small business loans for the period January 1, 2011, through September 30, 2013. The evaluation period for community development loans, services, and investments was November 1, 2010, through January 20, 2014. The Sterling Bank Evaluation included a full-scope review of the bank's assessment area, the entirety of which is within the New York-Newark-Jersey City, NY-NJ-PA Multistate Metropolitan Statistical Area and is composed of Nassau-Suffolk MD; New York City MSA; Poughkeepsie-Newburgh-Middletown MSA; Kingston MSA; and New York State Non-MSA, defined as the towns of Mamakating, Forestburgh, Thompson and Fallsburg, all in Sullivan County, New York. Examiners placed more weight on their review of the New York City MSA due to the significant number of lending and community development activities conducted in that metropolitan division during the evaluation period, and because a significant majority of census tracts in the assessment area are located in the New York City MSA.

Sterling National Bank and Provident Bank merged on October 31, 2013. For all but community development investments, the OCC evaluated Provident Bank's CRA activities. The OCC considered outstanding community development investments made by legacy Sterling National Bank after January 1, 2012.

nity development initiatives. Examiners noted that the bank supported a nonprofit organization promoting economic development in underserved urban and rural areas in New York state, which principally benefitted women, minorities, and LMI individuals trying to start or expand their businesses, as well as several other community development organizations. Sterling Bank also made investments and grants to organizations to provide and support affordable housing and community services to LMI individuals in its assessment area.

In evaluating the Service Test, examiners found that Sterling Bank participated in a number of community development services. The bank actively partnered with homeownership counseling agencies and provided financial literacy seminars to LMI individuals regarding first-time home buying experiences. Examiners noted that Sterling Bank participated in Federal Home Loan Bank of New York ("FHLBNY") programs aimed at providing down-payment assistance to first-time homebuyers and facilitating affordable housing construction, rehabilitation, and development. Examiners found the bank's retail delivery systems were reasonably accessible in essentially all portions of its assessment area.

CRA Performance of Hudson Valley Bank. Hudson Valley Bank was assigned an overall rating of "Satisfactory" by the OCC at its most recent CRA performance evaluation as of May 2013 ("Hudson Valley Bank Evaluation").[27] The bank received a "Low Satisfactory" rating for the Lending Test and "High Satisfactory" ratings for both the Investment Test and Service Test.

In evaluating the Lending Test, examiners found that Hudson Valley Bank's lending levels reflected adequate responsiveness to the credit needs of its New York assessment area, although examiners noted areas for improvement with respect to certain mortgage and small business lending. The bank's level of community development loans was considered excellent. In New York, examiners found that Hudson Valley Bank's geographic distribution of home purchase loans and home refinance loans was good, and the geographic distribution of multi-family loans was excellent. The bank's market share of multi-family loans originated in LMI geographies was higher than the bank's overall market share. Examiners noted that, during the evaluation period, the bank originated community development loans to construct, renovate, and fund operations of learning facilities, nursing homes, hospitals, and affordable housing for LMI individuals.

In evaluating the Investment Test, examiners found that Hudson Valley Bank demonstrated good responsiveness to the credit and community economic development needs within its New York assessment area by making investments targeting affordable housing. During the evaluation period, the bank (1) made investments in several school districts to educate and support children within the bank's assessment area, the majority of whom lived in LMI households, and (2) retained investments that provided credit to businesses that would not otherwise meet the requirements for traditional bank financing.

In evaluating the Service Test, examiners found that Hudson Valley Bank provided a high level of community development services through its offerings of financial and technical expertise to LMI individuals and small businesses. The bank also worked with various non-

[27] The Hudson Valley Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and small business loans for the period January 1, 2010, through December 31, 2012. The evaluation period for community development loans, investments, and service activities was June 7, 2010, through May 6, 2013. The Hudson Valley Bank Evaluation included a full-scope evaluation of the bank's assessment area in the state of New York, which consists of Westchester, Bronx, Rockland, Manhattan, and a portion of Brooklyn counties; and a limited-scope evaluation of Hudson Valley Bank's assessment areas in Connecticut, which consist of all of Fairfield County and a portion of New Haven County. Examiners placed greater weight on the bank's performance in New York because a majority of its activities are concentrated there.

profit organizations that provide affordable housing for LMI families, promote small business ventures, and educate young LMI individuals on the importance of financial planning and stability.

Sterling's Efforts since the Sterling Bank Evaluation. Following the January 2014 Sterling Bank Evaluation, Sterling Bank adopted a more robust, firm-wide CRA program ("CRA Plan") to increase market penetration and outreach in the bank's assessment area to more effectively meet the credit needs of the communities it serves. The CRA Plan establishes revised measurement criteria for the bank's CRA performance, refocuses the bank's investment strategy to include targeted assessment area investments and community development investments, sets forth goals for identifying new initiatives on CRA-related activities, and institutes an enterprise-wide data gathering initiative to track all CRA-related activity across the organization. The plan outlines specific activities within its assessment area on which the bank plans to focus, including increased marketing and community outreach; financial seminars; and increased mortgage and small business lending in LMI tracts, including to women-owned small businesses.

The CRA Plan is administered by the bank's CRA Officer, and the bank's CRA Oversight Committee monitors progress toward the plan's goals and recommends periodic changes, as appropriate. The status of CRA-related activities and progress in fulfilling the bank's strategic goals is periodically reported to executive management as well as the Enterprise Risk and Audit committees of the bank's board of directors. Sterling represented that the CRA Plan will be updated annually, and goals will be updated to reflect the strategic plan for each business unit, as well as for the bank as a whole.

Sterling represented that Sterling Bank met or exceeded the CRA Plan's 2014 goals, and that the bank has established updated CRA goals and initiatives for 2015. Sterling represented that, since the Sterling Bank Evaluation, the bank has made community development loans and investments focused on supporting the construction or financing of affordable housing and hospitals within its assessment area. Sterling has also made contributions to provide educational programs that benefit LMI and minority individuals, including donations to support schools serving minority and LMI students and to help those students move on to higher education, and hosting a number of seminars on homeownership in LMI areas within its assessment area. The bank makes charitable donations to nonprofit community groups within the New York City and New Jersey areas through its charitable foundation and has provided support for fundraising events and provided grants focusing on education initiatives.

Sterling has hosted a number of financial seminars on homeownership in LMI areas within its assessment area, and its CRA Plan includes a focus on hosting seminars on elder financial abuse, financial literacy, homeownership counseling, and first-time home buying; and on launching a program aimed at increasing lending to women-owned small businesses while providing access to networking, education, and capital. Further, Sterling Bank staff responsible for small business development have been attending community seminars and discussing small business opportunities in the bank's assessment area and intend to continue such outreach efforts.

Sterling Bank offers a suite of products to address the credit needs of LMI borrowers, including FHA, Veterans Administration, and Fannie Mae loan products, and participates in the FHLBNY's First Time Homebuyers Program. Sterling Bank has also partnered with community groups that provide homeowner-related services in LMI communities in New York City and provided funding for the development and preservation of affordable housing in the suburbs around New York City. Sterling represented that it has engaged in various outreach efforts within its assessment area, including marketing efforts, engagement with community groups, and efforts to offer educational programming to LMI communities within this assessment area regarding products offered by the bank. Sterling Bank conducted a direct-mail solicitation for the bank's home improvement loan product to homeowners in all LMI census tracts in their assessment area in December 2014 and intends to conduct similar efforts in 2015.

In addition, Sterling Bank recently added a new sales team with experience in direct lending to state and local governments, not-for-profit healthcare, and higher educational institutions, and expects to expand its efforts in lending to those groups. Sterling Bank offers small business credit products through the SBA's 504 and 7(a) programs, which benefit small for-profit and non-for-profit businesses. Sterling Bank lending staff actively participate in community events specifically targeted at small business owners. Sterling Bank also works with all of the New York State Small Business Development Centers throughout its community footprint, which provide information regarding the process of small business financing and opportunities.

C. Fair Lending and Other Consumer Protection Laws

The Board has considered the records of Sterling Bank and Hudson Valley Bank in complying with fair lending and other consumer protection laws. As part of its evaluation, the Board reviewed Sterling Bank's and Hudson Valley Bank's records of performance under fair lending laws, the comments received on the proposal and Sterling's response, the OCC's views regarding Sterling Bank's fair lending policies and procedures, and other confidential supervisory information. The Board also conferred with the OCC concerning the comments received on the proposal.

The Board has consulted with the OCC regarding its evaluation of compliance with fair lending laws and regulations by Sterling Bank and Hudson Valley Bank. The OCC recently reviewed the compliance programs of Sterling Bank and Hudson Valley Bank, focusing on the institutions' fair lending risk. The OCC had no supervisory concerns regarding either bank's compliance with fair lending laws and regulations.

As explained above, Sterling Bank has determined to increase its marketing and outreach efforts to better serve the needs of its communities and has adopted its revised CRA Plan. Although the bank intends to remain primarily a commercial lender, it expects to increase its outreach efforts for residential mortgages. Sterling Bank also stated that it will continue pursuing the other community development and CRA-related initiatives set forth in its revised CRA Plan. Sterling plans to reassess the goals and objectives in its CRA Plan to determine if any adjustments are necessary to reflect the acquisition of Hudson Valley.

Sterling Bank's Fair Lending Program. Sterling and Sterling Bank have established policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. These policies and procedures have been reviewed in the examination process by the OCC, which considered them satisfactory. Sterling Bank intends to implement these policies and procedures across the combined organization following consummation of the transaction.

Sterling Bank maintains an audit program for compliance with these programs and procedures, and provides compliance training and education for all employees, including making additional training required for employees engaged in mortgage loan origination, processing, underwriting, and credit decisionmaking. The training includes programs on the bank's policies and procedures and on how to identify and prevent abusive or predatory lending.

Sterling Bank has established a fair lending program that is reviewed and approved annually by the Enterprise Risk Management Committee of the board of directors. Sterling Bank's Compliance Risk Management Department ("Compliance Department") is responsible for managing the bank's fair lending compliance program, including the assessment of fair lending compliance and any resulting remediation activity. The Compliance Department regularly assesses fair lending compliance through a monitoring and testing regime and oversees the resulting remediation activity to ensure all findings are effectively mitigated. The Compliance Department also conducts quarterly fair lending risk assessments to identify and measure risks in the bank's lending processes and conducts statistical analyses to detect practices that could result in disparate treatment or pricing discrimination involving loan applicants.

Sterling Bank maintains a secondary review process for all denied consumer, residential, and small business loan applications to ensure that all qualified applicants are approved. This second review is conducted to ensure that the bank's fair 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 any prohibited basis. In the event of a recommendation for denial or counter-offer of a loan application, two senior managers, such as a senior credit officer and a senior underwriter, must review the application independently. In addition, before making an extension of credit, a member of the bank's secondary marketing department reviews the terms of the loan, in particular loan pricing. In the event of non-compliance with the bank's policies, an appropriate adjustment to pricing will be made.

D. 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. Sterling represented that the proposal would provide customers of the combined organization access to an expanded branch network across the New York metropolitan area and would offer additional or expanded services to current Sterling Bank and Hudson Valley Bank customers, including existing specialty finance and deposit products not offered to current customers of the other institution. Sterling asserted that the combined organization would be better able to serve larger, more diverse clients, particularly in the middle market segment, and the potential cost savings generated by the integration of the two institutions would provide opportunities to pass those savings on to their customers. Further, Sterling stated that the combined organization would be strengthened by the complementary aspects of the two entities' businesses, including customer focus, geographic coverage, business orientation, and compatibility of the companies' management and operating styles, as well as the combined experience and expertise of their respective management and employees, resulting in a stronger and more stable franchise.

E. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions involved under the CRA; the institutions' records of compliance with fair lending and other consumer protection laws; consultations with the OCC; confidential supervisory information; information provided by Sterling, including Sterling's representations concerning its CRA Plan; and the public comments on the proposal. Based on that review, the Board believes that Sterling is helping to meet the credit needs of the communities it serves and that the proposal would result in public benefits. Accordingly, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[28]

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

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, Sterling would have approximately $10.6 billion in consolidated assets and, by any of a number of alternative measures of firm size, Sterling 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 determines 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.[31] In reaching its conclusion, the Board has con-

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[28] 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).

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

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

[31] The commenter twice 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 requests 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,

sidered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Sterling with all the conditions imposed in this Order, including receipt of all required regulatory approvals, and on any commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 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 New York acting pursuant to delegated authority.

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

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Merchants & Farmers Bancshares, Inc.
Leesville, Louisiana

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2015–17 (June 15, 2015)

Merchants & Farmers Bancshares, Inc. ("M&F") has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to acquire Vernon Bancshares, Inc. ("Vernon"), and thereby indirectly acquire its subsidiary bank, The Vernon Bank ("Vernon Bank"), all of Leesville, Louisiana. Following the proposed acquisition, Vernon Bank, a state nonmember bank, would be merged into M&F's subsidiary state nonmember bank, Merchants & Farmers Bank and Trust Company ("M&F Bank"), Leesville, Louisiana.[2]

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submitted written comments that the Board has considered in acting on the proposal. The commenter's requests do not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the requests do not demonstrate why the written comments do not present the 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 requests for a public hearing on the proposal are denied.

The commenter also twice requested an extension of the comment period. The Board provides a public comment period for an application to provide interested persons the opportunity to submit information and views related to the statutory factors it must consider under the BHC Act. The Board's Rules of Procedure ("Rules") also establish a framework, based on the schedules followed by many courts, that limits iterative responses between applicants and commenters. The Board's Rules contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. The commenter's requests for additional time to comment do not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the requests for an extension of the comment period are denied.

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[1] 12 U.S.C. § 1842(a)(5).

[2] The merger of Vernon Bank into M&F Bank is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC") pursuant to section 18(c) of the Federal Deposit Insurance Act, 12 U.S.C. § 1828(c). The FDIC approved the merger on March 25, 2015.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 9720 (2015)).[3] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

M&F, with consolidated assets of approximately $320.8 million, is the 2099th largest insured depository organization in the United States.[4] M&F Bank operates only in Louisiana and is the 47th largest depository institution in that state, controlling deposits of approximately $252.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in Louisiana.[5]

Vernon, with consolidated assets of approximately $78.6 million, is the 5037th largest insured depository organization in the United States. Vernon controls Vernon Bank, which is the 113th largest depository institution in Louisiana. Vernon Bank, which operates only in Louisiana, controls deposits of approximately $69.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, M&F would become the 1688th largest depository organization in the United States, with consolidated assets of approximately $399.4 million, which represent less than 1 percent of the total assets of insured depository institutions in the United States. M&F Bank would control total deposits of approximately $315.0 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Louisiana, M&F would become the 36th largest depository organization, controlling deposits of approximately $321.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

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

M&F's and Vernon's subsidiary depository institutions compete directly in the Vernon/Beauregard area, Louisiana banking market ("Vernon/Beauregard banking market").[7] 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 M&F would control upon

3 12 CFR 262.3(b).

4 Nationwide deposit, asset, and ranking data are as of December 31, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings and loan associations.

5 State deposit, market share, and ranking data are as of June 30, 2014, unless otherwise noted.

6 12 U.S.C. § 1842(c)(1).

7 The Vernon/Beauregard banking market is defined as Vernon Parish and the northern half of Beauregard Parish, both of Louisiana.

consummation of the proposal;[8] 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");[9] and other characteristics of the market.

In the Vernon/Beauregard banking market, the change in concentration level and the concentration level on consummation would exceed the threshold levels in the DOJ Bank Merger Guidelines. M&F Bank is the largest insured depository institution in the Vernon/Beauregard banking market, controlling deposits of approximately $182.6 million, which represent approximately 25.8 percent of market deposits. Vernon Bank is the fifth largest insured depository institution in the market, controlling deposits of approximately $69.2 million, which represent approximately 9.7 percent of market deposits. On consummation of the proposal, M&F Bank would remain the largest depository institution in the Vernon/Beauregard banking market, controlling deposits of approximately $251.7 million. The market concentration level in the Vernon/Beauregard banking market as measured by the HHI would increase by 503 points, from 1889 to 2392, and the market share of the combined entity would represent approximately 35.5 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.[10] Several factors indicate that the increase in concentration in the Vernon/Beauregard banking market, as measured by the HHI, and the market share of the combined organization overstate the potential competitive effects of the proposal in the market.

The Board has considered the competitive influence of two active credit unions, Barksdale Federal Credit Union ("Barksdale Credit Union"), Bossier City, Louisiana, and Navy Federal Credit Union ("Navy Federal"), Vienna, Virginia, in the Vernon/Beauregard banking market and determined that the activities of the credit unions exert a competitive influence that mitigates, in part, the potential effects of the proposal.[11] Each of these credit unions offers a wide range of consumer banking products, operates street-level branches, and has membership criteria that include a majority of the residents in the Vernon/Beauregard

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[8] 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).

[9] 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.

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

[11] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *Chemical Financial Corporation*, FRB Order No. 2015-13 (April 20, 2015); *Central Bank of Audrain County*, FRB Order No. 2014-17 (October 17, 2014); *Chemical Financial Corporation*, FRB Order No. 2014-16 (September 30, 2014); *ANB Bank*, FRB Order No. 2014-14 (September 11, 2014); *Old National Bancorp,* FRB Order No. 2014-13 (July 14, 2014); *First Interstate BancSystem, Inc.*, FRB Order No. 2014-11 (June 30, 2014); *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012–12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012–9 (August 30, 2012); and *United Bankshares, Inc.* (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011).

banking market.[12] The Board finds that these circumstances warrant including the deposits of these credit unions at a 50-percent weight in estimating market influence.[13] Adjusting to reflect competition by these credit unions in the market, the market concentration level in the Vernon/Beauregard banking market as measured by the HHI would increase by 389, from a level of 1582 to 1971, and the market share of M&F resulting from the transaction would increase in the market from 22.7 percent to 31.2 percent.

After consummation of the proposal, the merged entity would face competition from nine competitors in the market, some with a significant presence in the market. The second and third largest competitors in the market would control approximately 21.3 percent and 17.5 percent of market deposits, respectively, and the fourth largest competitor in the market would control approximately 11.0 percent of market deposits, when weighting the deposits of Barksdale Credit Union and Navy Federal at 50 percent.

The record also indicates that the Vernon/Beauregard banking market may be attractive for entry and expansion by bank competitors. In 2008, Navy Federal entered the market, and the fourth largest bank competitor in the market is expanding its presence in the market by opening a second branch.

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

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under 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 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, 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 pros-

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[12] Notably, the membership criteria of both Barksdale Credit Union and Navy Federal include, among others, active and retired military personnel and their families. As the largest employer in the Vernon/Beauregard banking market is the United States Army Base at Fort Polk, and because a significant population of active and retired military personnel and their family members reside in the Vernon/Beauregard banking market, a majority of the residents in the banking market are eligible to join these credit unions.

[13] Weighting the deposits at 50 percent takes into account the limited lending done by these credit unions to small businesses relative to commercial banks' lending levels.

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

M&F and Vernon are both well capitalized and would remain so on consummation of the proposal. The transaction is structured as an all cash deal, with each share of Vernon being purchased directly, based upon the agreed price.[14] The asset quality, earnings, and liquidity of M&F and Vernon are consistent with approval, and M&F 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. The Board has reviewed the examination records of M&F, Vernon, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by M&F, the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking and anti-money-laundering laws.

M&F, Vernon, and their subsidiary depository institutions are each considered to be well managed. M&F's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of M&F have substantial knowledge of and experience in the banking and financial services sectors.[15]

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

Based on all the facts of record, including M&F's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of M&F and Vernon 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 Community Reinvestment Act ("CRA").[16] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[17] and

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[14] M&F would fund the transaction with available cash on hand and through the liquidation of marketable securities. M&F has the resources to effect the proposed transaction.

[15] The senior management of M&F and M&F Bank would remain the same after consummating the acquisition.

[16] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

[17] 12 U.S.C. § 2901(b).

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.[18]

The Board has considered all the facts of record, including reports of examination of the CRA performance of M&F Bank and Vernon Bank, information provided by M&F, 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 supervisors of the CRA performance records of the relevant institutions.[19] 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.[20] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of M&F Bank. M&F Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the FDIC as of June 2012 ("M&F Bank Evaluation").[21] 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 the bank exhibited a good record of lending within the assessment area, with a majority of bank's loans made within the assessment area. Examiners also noted that the bank's geographic distribution of lending reflected a satisfactory penetration and loan dispersion throughout the assessment area. Further, the bank's lending distribution to borrowers reflected good responsiveness to businesses of different sizes and individuals of different income levels, particularly LMI borrowers, as well as good performance in meeting the credit needs of small businesses in the assessment area.

CRA Performance of Vernon Bank. Vernon Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the FDIC in March 2011 ("Vernon Bank Evaluation").[22] Examiners determined that the bank's average quarterly net loan-to-deposit ratio was satisfactory given the bank's resources and assessment area credit needs. Examiners noted that a substantial majority of the bank's loans were made within its assessment area, demonstrating the bank's willingness to meet the credit needs of its assessment area. Further, examiners found that the bank's geographic distribution of loans throughout the assessment area was reasonable. Examiners also noted that the bank's distribution of loans reflected reasonable penetration among businesses of different sizes and

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18 12 U.S.C. § 2903.

19 *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

20 12 U.S.C. § 2906.

21 The M&F Bank Evaluation was conducted using Small Institution CRA Examination Procedures, and examiners reviewed the bank's lending activity from April 23, 2007, through June 5, 2012. The M&F Bank Evaluation included a full-scope review of Vernon Parish and Calcasieu Parish, both of Louisiana. Examiners gave more weight to the Vernon Parish non-MSA (Metropolitan Statistical Area), based on the percentages of M&F Bank's total loans, deposits, and banking offices located in the Vernon Parish.

22 The Vernon Bank Evaluation was conducted using Small Institution CRA Examination Procedures. Examiners reviewed the bank's lending activity from February 6, 2006, through March 7, 2011. The Vernon Bank Evaluation included an evaluation of Vernon Parish.

individuals of different income levels, as well as reasonable performance in meeting the credit needs of small businesses in the assessment area.

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.

M&F 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 Vernon Bank customers, including expanded access to more ATM locations and extended branch hours. M&F also states that the combined organization's larger lending limit would allow M&F to make larger commercial loans to its customers. Further, M&F represents that M&F Bank will continuously monitor the CRA performance of the combined entity in order to ensure that the organization's obligations thereunder are met.

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 M&F, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of M&F Bank and Vernon Bank, review of examination reports, and 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 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."[23]

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.[24] 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

[23] 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).

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

that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[25]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, M&F would have approximately $399.4 million 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 determines that considerations relating to financial stability are consistent with approval.

Conclusion

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

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

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

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

Order Issued Under Federal Reserve Act

The Bank of Versailles
Versailles, Missouri

Order Approving Establishment of a Branch
FBR Order No. 2015–14 (May 7, 2015)

The Bank of Versailles ("BOV"), Versailles, Missouri, a state member bank, has requested the Board's approval under section 9 of the Federal Reserve Act ("FRA")[1] and the Board's Regulation H[2] to establish a branch at 76 Grand Point Boulevard in Sunrise Beach, Missouri (the "Sunrise Beach 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.[3] 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.

BOV is the 109th largest depository institution in Missouri, controlling approximately $197 million in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.[4] BOV's main office is in Versailles, Missouri, and BOV has three additional branches in Missouri.[5]

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

The Board has considered the application in light of these factors and a public comment received from two individuals regarding the proposal. The commenters objected to the proposal, alleging that, because BOV was unable to provide the commenters with certain documents they requested and, also, failed to maintain certain customer information, it fails to comply with the recordkeeping and reporting requirements of the Bank Secrecy Act ("BSA").

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of BOV, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, and information provided by BOV. BOV is well capitalized and would remain so on consummation of the proposal.

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1 12 U.S.C. § 321 *et seq.*

2 12 CFR 208.

3 12 CFR 262.3(b).

4 Data are as of June 30, 2014. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

5 BOV's branches are located in Camden and Morgan counties.

6 12 CFR 208.6(b).

7 12 U.S.C. § 2901 *et seq.*

After considering all the facts of record, the Board concludes that the financial history and condition, capital adequacy, and future earnings prospects of BOV are consistent with approval of the proposal. The Board also has reviewed BOV's proposed investment in the Sunrise Beach branch and concludes that the investment is consistent with regulatory limitations on investment in bank premises.[8]

In considering BOV's managerial resources, the Board has reviewed BOV's examination record, including assessments of its management, risk-management systems, and operations. The Board also has considered its supervisory experiences with BOV and BOV's record of compliance with applicable banking laws, including anti-money-laundering laws. In addition, the Board has considered the comment on the proposal. The commenters allege that BOV does not comply with the recordkeeping requirements of the BSA and that BOV does not follow the customer identification requirements of the BSA. BOV was unable to comply with portions of the commenters' request due to a temporary computer failure, which resulted in the loss of some data that could not be retrieved from document imaging systems.[9] BOV also asserts that it is in compliance with BSA requirements and that it follows the applicable customer identification requirements of the BSA.

BOV is considered to be well managed. Prior to the filing of this application, the Federal Reserve Bank of Kansas City ("Reserve Bank") conducted a review of account activity and account statements pertaining to commenters' business account at BOV, including the bank president's administration of this account, concurrent with a regularly scheduled examination. The review investigated allegations raised by commenters regarding recordkeeping and the administration of this account. Examiners reviewed samples of account statements provided by BOV and considered the administration of the commenters' business account to be appropriate. Examiners also concluded that BOV's BSA/anti-money-laundering compliance program was satisfactory. In addition, examiners confirmed that BOV has management information systems that capture relevant customer identification data at the time of account opening.

Based on this review and all the facts of record, the Board concludes that the financial and managerial factors, as well as the records of effectiveness of BOV 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 BOV'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.[10] 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.[11]

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8 12 CFR 208.21(a).

9 The commenters are former business partners of the current president of BOV in a failed real estate venture. The commenters requested from BOV certain bank account records related to the venture as part of their ongoing personal bankruptcy court proceedings. The court denied commenters' motion to compel BOV to produce all documents related to the business accounts of the failed real estate venture. Instead, BOV was directed to produce a sample of the documents commenters requested.

10 12 U.S.C. § 2901(b).

11 12 U.S.C. § 2903.

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.[12] 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.[13] 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.[14]

The Board has considered all the facts of record, including reports of examination of the CRA performance of BOV and confidential supervisory information. BOV was assigned an overall "satisfactory" rating at its CRA performance evaluation by the Reserve Bank as of February 27, 2012. BOV was evaluated under the Small Bank Examination procedures, which consider factors such as BOV's loan-to-deposit ratio and lending inside its assessment area.

Examiners reviewed a sample of residential real estate and commercial loans originated between December 2009 and November 2011.

Examiners found that BOV was reasonably responsive to the credit needs of its assessment area. Examiners noted that BOV extended the majority of its loans inside its assessment area and that its distribution of loans to LMI borrowers was reasonable. Examiners also noted that BOV's lending to small businesses was excellent, penetrating all income levels.

BOV represents that the proposed Sunrise Beach branch would provide public benefits by enabling customers living in the Sunrise Beach area to access banking services more conveniently. Currently, customers living in Sunrise Beach must cross a toll bridge to access the nearest BOV branch and are several miles away from a bank branch of any kind. The proposed branch would be conveniently located in the Sunrise Beach community.

Based on all the facts of record and for the reasons described in this order, the Board concludes that the convenience and needs factor, including BOV's CRA performance, 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.[15] The Board's approval is specifically conditioned on BOV'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

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[12] S*ee Interagency Questions and Answers Regarding Community Reinvestment*, 5 *Fed. Reg.* 11642, 11665 (2010) ("Interagency Q&As on CRA").

[13] 12 U.S.C. § 2906.

[14] *See Interagency Q&As on CRA*, 75 *Fed. Reg.* 11642 (2010).

[15] The commenters on this proposal request that the Board hold a public hearing on the proposal. Under its rules, the Board may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. 12 CFR 262.3(e). The Board has considered the commenters' request in light of all the facts of record. In the Board's view, the commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. In addition, the request does not demonstrate why the written comment does not present the commenters' views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

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 May 7, 2015.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board