



Legal Developments: Third Quarter, 2015

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

CIT Group, Inc.
Livingston, New Jersey

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2015–20 (July 19, 2015)

CIT Group, Inc. (“CIT Group”), Livingston, New Jersey, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ and its subsidiary, Carbon Merger Sub LLC, New York, New York, have requested the Board’s approval under section 3 of the BHC Act² to acquire IMB Holdco LLC (“IMB Holdco”) and thereby indirectly acquire OneWest Bank, National Association (“OneWest Bank”), both of Pasadena, California. Immediately following the proposed acquisition, CIT Group’s subsidiary bank, CIT Bank, Salt Lake City, Utah, would be merged into OneWest Bank, with OneWest Bank being the surviving entity.³

CIT Group, with consolidated assets of approximately \$47.9 billion, is the 42nd largest insured depository organization in the United States, controlling approximately \$15.9 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁴ CIT Group controls CIT Bank, which operates a single, nonretail banking office in Salt Lake City, Utah, soliciting nationwide deposits through an Internet-based deposit-taking platform. CIT Bank is the 10th largest insured depository institution in Utah, with approximately 3.1 percent of the total deposits in insured depository institutions in that state.

IMB Holdco, with total consolidated assets of \$21.8 billion, is the 70th largest insured depository organization in the United States, controlling approximately \$14.1 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. IMB Holdco controls OneWest Bank, which operates solely in California. OneWest Bank is the 13th largest insured depository institution in California, with approximately 1.4 percent of the total deposits in insured depository institutions in that state.

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The merger of CIT Bank into OneWest 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). Upon consummation of the bank merger, CIT Group intends to change the name of the combined bank to CIT Bank, National Association.

⁴ Asset and nationwide deposit-ranking data are as of December 31, 2014, unless otherwise noted. State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings and loan associations.

On consummation of this proposal, CIT Group would become the 41st largest insured depository organization in the United States by deposits, controlling approximately \$30 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in the United States. CIT Group would become the 36th largest depository organization in the United States by assets, with consolidated assets of approximately \$70 billion. Because CIT Bank and OneWest Bank do not have overlapping operations, the combined bank would continue to rank as the 10th and 13th largest insured depository institution in Utah and California, respectively.

Public Comment on Proposal

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (79 *Federal Register* 51333 (August 28, 2014) and 80 *Federal Register* 7595 (February 11, 2015)) and in accordance with the Board's Regulation Y and Rules of Procedure.⁵ The time for submitting comments has expired. The Board extended the initial period for public comment to accommodate the broad public interest in this proposal, providing interested persons until February 26, 2015, a total period of approximately six months, to submit written comments.

In light of the significant public interest in the proposal, the Board held a public meeting in Los Angeles, California, to provide interested persons an opportunity to present oral comments on the factors that the Board must review under the BHC Act.⁶ Approximately 111 individuals provided oral testimony at the public meeting, a subset of which also submitted written comments.⁷ In total, approximately 2,364 individuals and organizations submitted comments on the proposal orally, in writing, or both. Commenters included community groups, nonprofit organizations, customers of the two banking organizations, a member of Congress, and other interested organizations and individuals.

A large number of commenters supported the proposal.⁸ Many of these commenters contended that the proposal would benefit communities in California, including through increased employment, business development opportunities, and access to resources and services provided by the combined institution. Commenters also commended OneWest Bank for its commitment to local communities and described favorable experiences with the small business, community development, and mortgage programs of the OneWest organization. In addition, commenters praised CIT Group and IMB Holdco's charitable contributions and noted that officers and employees of these institutions frequently provide valuable resources and services to community organizations.

A significant number of commenters either opposed the proposal, requested that the Board approve the proposal only subject to certain conditions, or expressed concerns about the proposal.⁹ Many commenters questioned whether the proposal would result in public ben-

⁵ 12 CFR 225.16(b); 12 CFR 262.3(b).

⁶ The public meeting was held jointly by the Board and the OCC on February 26, 2015, at the Los Angeles Branch of the Federal Reserve Bank of San Francisco.

⁷ The Board permitted commenters who requested to participate in the public meeting but were unable to attend to have their written comments presented by other participants at the meeting.

⁸ Approximately 2,177 commenters supported the proposal, of which approximately 2,093 commenters submitted substantially identical form letters. Of these commenters, approximately 51 commenters provided oral comments in support of the proposal.

⁹ Approximately 187 commenters opposed the proposal. Of these commenters, approximately 39 commenters submitted individualized written comments, and approximately 88 commenters submitted substantially identical form letters. Approximately 60 persons provided oral comments in opposition to the proposal. Two commenters, the California Reinvestment Coalition and National People's Action, submitted petitions in opposition to the proposal, with the names of approximately 15,559 and 6,500 individuals, respectively.

efits, arguing that both organizations are the successors to failed institutions and have received significant government assistance since 2008. Commenters also expressed concerns about the impact of the proposal on the financial stability of the U.S. banking or financial system given that the combined organization would have more than \$50 billion in assets. In addition, commenters expressed concerns about the level of CIT Bank's small business lending in certain markets and argued that CIT Bank should invest more in the communities in which it accepts Internet deposits.

A significant number of comments in opposition to the proposal related to OneWest Bank. Many commenters criticized the mortgage lending, servicing, and foreclosure practices of OneWest Bank, including with respect to its home equity conversion mortgage loan ("reverse mortgage loan") products.¹⁰ Commenters alleged that OneWest Bank, among other things, engaged in wrongful foreclosures, deprived consumers of their property, unfairly denied mortgage modifications or engaged in harmful servicing tactics during the loss mitigation process, deceived mortgage borrowers and failed to inform them of their rights, and foreclosed improperly upon the houses of nonborrowing spouses.

Many commenters also raised concerns about OneWest Bank's performance under the Community Reinvestment Act ("CRA")¹¹ and the bank's compliance with fair lending laws and regulations. In this regard, commenters alleged that OneWest Bank does not meet the needs of low- and moderate-income ("LMI") and minority communities in its product offerings, charitable contributions, small business lending, branch locations, and marketing. A number of commenters alleged that there are racial disparities in the bank's small business lending and its origination and servicing of certain mortgage products.

A number of commenters expressed concerns regarding the impact of the proposal on financial stability, asserting that the proposal would result in an institution with greater than \$50 billion in assets that would be "too big to fail." Some commenters alleged that CIT Group is materially interconnected with the economy and with other companies that are important to the stability of the financial system. Commenters also raised concerns about the amount of assets at the combined organization that would not have observable market prices.

In evaluating the statutory factors under the BHC Act, the Board considered the information and views presented by all commenters, including information presented at the public meeting and in written submissions. The Board also considered all the information presented in the application and supplemental filings by CIT Group, various reports filed by the relevant companies, publicly available information, and other information and reports. In addition, the Board consulted with the relevant financial supervisory agencies and reviewed confidential supervisory information, including examination reports on the depository institution holding companies and the depository institutions involved. After a review of all the facts of record, and for the reasons discussed in this order, the Board has concluded that the statutory factors it is required to consider under the BHC Act are consistent with approval of the proposal.

¹⁰ Commenters alleged that the number of consumer complaints the bank has received concerning reverse mortgage loans are indicative of issues with its lending and servicing practices regarding this product.

¹¹ 12 U.S.C. § 2901 *et seq.*

Factors Governing Board Review of the Transaction

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

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.¹³ 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.¹⁴ In addition, the Board may not approve an interstate application 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.¹⁵

For purposes of the BHC Act, the home state of CIT Group is Utah, and OneWest Bank's home state is California.¹⁶ CIT Group is well capitalized and well managed under applicable law, and CIT Bank has a satisfactory CRA rating. There are no minimum age requirements under California law that apply to CIT Group's acquisition of IMB Holdco and OneWest Bank.¹⁷

On consummation of the proposed transaction, CIT Group would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the

¹² 12 U.S.C. § 1842(c).

¹³ 12 U.S.C. § 1842(d)(1)(A).

¹⁴ 12 U.S.C. § 1842(d)(1)(B).

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

¹⁶ *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 national bank's home state is the state in which the main office of the bank is located.

¹⁷ The only age requirement under California state law concerns interstate bank mergers where the surviving bank is an out-of-state bank. *See* Cal. Fin. Code § 1685(a). However, this age requirement is not applicable to the proposed transaction, which involves mergers of holding companies and an interstate bank merger where the surviving bank will be a national bank that maintains its main office in California.

United States. In addition, the combined organization would control \$14.1 billion (or approximately 1.4 percent) and \$13.9 billion (or approximately 3.1 percent) of the total amount of deposits of insured depository institutions in California and Utah, respectively, which are the two states in which the combined organization would have operations upon consummation of the proposal. 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.¹⁸

CIT Group and IMB Holdco do not directly compete in any retail banking market. Based on all the facts of record, including the differences in business models, products, and methods for providing services to customers, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.¹⁹

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, 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 their financial and managerial resources and the proposed business plan.

CIT Group and CIT Bank are well capitalized, and the combined organization 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.²⁰ The asset quality, earnings, and liquidity of CIT Bank and OneWest Bank are consistent with approval, and CIT Group appears to have adequate resources to absorb the costs of the

¹⁸ 12 U.S.C. § 1842(c)(1)(B).

¹⁹ The Department of Justice has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

²⁰ As proposed, IMB Holdco would ultimately be merged into CIT Group, and each IMB Holdco ownership interest would be converted into a right to receive CIT Group common stock and cash, based on an exchange ratio. CIT Group has the financial resources to fund the exchange.

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 CIT Group has sufficient financial resources to effect the proposal.²¹

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 CIT Group, IMB Holdco, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by CIT Group, the Board's supervisory experiences with CIT Group and IMB Holdco 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.

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

The Board also has considered CIT Group's plans for implementing the proposal. CIT Group is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. CIT Group would implement its risk-management policies, procedures, and controls at the combined organization, which would be supplemented to address the additional business lines and risks associated with IMB Holdco's and OneWest Bank's operations, and these are considered acceptable from a supervisory perspective. In addition, management of CIT Group and IMB Holdco has the experience and resources that should allow the combined organization to operate in a safe and sound manner,²² and CIT Group plans to integrate OneWest Bank's existing management and personnel in a manner that augments CIT Group's management.²³

²¹ Some commenters alleged that CIT Group plans to pay dividends to shareholders before becoming subject to enhanced prudential standards pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Pub. L. No. 111-203, 124 Stat. 1376, 1423–32 (2010), codified at 12 U.S.C. § 5365, and the Board's Regulation YY, 12 CFR Part 252. The Board has considered the financial resources of the combined organization, including the effect of anticipated capital distributions, and concludes that financial considerations are consistent with approval.

²² Commenters alleged that CIT Group would pay excessive compensation to the executives from IMB Holdco and OneWest Bank who would become executives of the combined organization. CIT Group has the resources to pay the proposed compensation, and the level of compensation does not raise safety and soundness concerns. In determining incentive compensation for executives at IMB Holdco and OneWest Bank, as well as those at CIT Group, the applicant also is expected to follow the guidance issued by the Board regarding incentive compensation. See *Guidance on Sound Incentive Compensation Policies*, 75 *Federal Register* 36396 (June 25, 2010).

In addition, some commenters expressed concerns regarding the combined organization's managerial resources to comply with enhanced prudential standards pursuant to section 165 of the Dodd-Frank Act and the Board's Regulation YY. CIT Group has the financial and managerial resources to comply with the Board's regulations implementing section 165 of the Dodd-Frank Act, and the Board will monitor CIT Group's compliance with these regulations through the supervisory process.

²³ On consummation, the chairman of IMB Holdco and a director of OneWest Bank would be added to CIT Group's board of directors. In addition, the chairman of the boards of IMB Holdco and OneWest Bank would hold the senior executive officer positions of vice chairman of CIT Group and chairman of the combined bank, while the president of IMB Holdco and OneWest Bank would become a co-president of CIT Group and president and chief executive officer of the combined bank.

Some commenters expressed concerns about CIT Group's managerial resources to service residential mortgages and reverse mortgage loans, given CIT Group's relative lack of experience in mortgage servicing. As mentioned above, CIT Group plans to integrate OneWest Bank's existing management and personnel in a manner that augments CIT Group's management and capacity consistent with the combined organization's scope of activities, and CIT Group has devoted substantial resources to planning for the integration of OneWest Bank's business operations.

Based on all the facts of record, including CIT Group's supervisory record, managerial and operational resources, and plans for operating the combined institutions after consummation, and comments received on the proposal,²⁴ 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 CIT Group and IMB Holdco in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served. In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve 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.²⁵ In addition, the Board considers the banks' overall compliance record, the results of recent fair lending examinations and other supervisory assessments; the supervisory views of examiners; other supervisory information; and comments received on the proposal. The Board also may consider the applicant institution's business model, marketing and outreach plans, plans following consummation, and any other information the Board deems relevant.

In considering this proposal, the Board has considered all the facts of record, including reports of examination of the CRA performance of CIT Bank and OneWest Bank, the fair lending and compliance records of both banks, confidential supervisory information, information provided by CIT Group, and public comments received on the proposal. The Board also consulted with the Consumer Financial Protection Bureau ("CFPB") and the OCC concerning their evaluations of OneWest Bank's compliance with fair lending and consumer protection laws and regulations and the comments received on the proposal. The CFPB did not identify any supervisory concerns regarding OneWest Bank.²⁶ The OCC considered the comments opposing the proposal, including allegations against OneWest Bank, as part of the OCC's review of the proposed merger of OneWest Bank and CIT Bank and has approved the bank merger.

A. Summary of Public Comments on Convenience and Needs

As noted above, the Board held a public meeting to facilitate receiving comments on the proposal from interested members of the public. A significant number of comments were submitted, orally and/or in writing, through this process.

²⁴ Commenters expressed concern about the level of racial and ethnic diversity among OneWest Bank's employees and officers and about OneWest Bank's efforts to do business with minority-owned suppliers. However, other commenters praised OneWest Bank's diversity, stating that minority individuals represented a good proportion of the makeup of OneWest Bank's employees and executives and that the combined bank would include representatives from Hispanic, Asian, and African American communities on its board of directors and would establish spending targets with women and minority-owned businesses. The Board believes that these contentions and concerns are outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. *See Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217, 223 n.31 (2004); *see also Western Bancshares, Inc. v. Board of Governors*, 480F.2d 749 (10th Cir. 1973) ("*Western Bancshares*").

²⁵ 12 U.S.C. § 1842(c)(2).

²⁶ Several commenters represented that they had filed complaints with the CFPB regarding OneWest Bank's mortgage foreclosure practices.

Many commenters supported the proposal.²⁷ These commenters generally believed that the CIT Group and OneWest Bank organizations provide valuable services to their communities. In particular, commenters contended that the proposal would result in a strong bank that would support the retention and creation of jobs in the communities it serves. Commenters also contended that the proposal would expand opportunities for LMI and minority borrowers and businesses by increasing access to credit and fostering partnership opportunities between the combined organization and groups that serve LMI and minority individuals. These commenters also praised OneWest Bank and its management for the bank's community outreach efforts and support for various community development programs and initiatives, including programs that help provide mortgage counseling for minority borrowers, mentoring for at-risk youth, and services and assistance for service-disabled veterans. Commenters also noted OneWest Bank's support for school, faith-based, arts, and financial literacy programs, many of which target minority and LMI individuals.

The Board received a large number of comments opposing the proposal on the basis of the CRA records of the involved institutions. A significant number of comments alleged that CIT Bank is not meeting its obligations to help meet the credit needs of all the communities across the United States from which it collects deposits through its Internet-based deposit-taking platform.²⁸ Many commenters also expressed concerns that the combined organization's future performance under the CRA will not be commensurate with the combined bank's size and capacity.

The Board also received a significant number of comments that were critical of OneWest Bank's CRA performance record, including its "low satisfactory" rating on the Investment Test in its most recent CRA evaluation. Commenters criticized the number of branches maintained by OneWest Bank in LMI census tracts and the level of loans to businesses with less than \$1 million in annual revenues extended by OneWest Bank. Additionally, commenters alleged that the bank's community development lending and investment activities have not been adequately responsive to community credit needs.²⁹ Commenters also alleged racial disparities in OneWest Bank's lending activities. Some commenters alleged that OneWest Bank made a disproportionately low number of home mortgage loans to Asian and African American borrowers in the Los Angeles, California, area based on data reported for 2012 under the Home Mortgage Disclosure Act of 1975 ("HMDA").³⁰

A significant number of commenters alleged that OneWest Bank's mortgage servicing and foreclosure practices and policies harmed consumers and did not comply with legal requirements, including those of the California Homeowner Bill of Rights.³¹ In particular, commenters alleged that OneWest Bank failed to keep accurate records and paperwork related to mortgage loans as part of the loan modification and foreclosure processes; unfairly

²⁷ A number of commenters alleged that OneWest Bank inappropriately solicited public comments in support of the application, including by providing financial incentives. The Board invites comments from all members of the public that have an interest in the application. The Board considers all timely and substantive comments on an application without regard to the commenters' motivation for supporting or opposing the application.

²⁸ For example, one commenter alleged that CIT Bank has collected a significant amount of deposits from Monroe County, New York, but has provided only minimal small business lending in the area, with none of the lending going to businesses with annual revenues of less than \$1 million.

²⁹ Commenters alleged that, compared to its peers, OneWest Bank has a low level of charitable contributions as a percentage of deposits and that only a small percentage of the bank's charitable contributions are directed towards supporting affordable housing. Moreover, commenters alleged that OneWest Bank has no multifamily loan product to support affordable housing development.

³⁰ 12 U.S.C. § 2801 *et seq.*

³¹ 2012 Cal. Stat. 2314 (codified in scattered sections of Cal. Civ. Code).

accelerated loans and denied loan modifications;³² failed to provide a single point of contact to assist borrowers; pursued foreclosure proceedings against borrowers during the loan modification process; inappropriately advised borrowers to default on their loans in order to qualify for loan modification programs and subsequently foreclosed on the defaulted loans; and failed to inform consumers of their rights at the time of reverse mortgage loan origination, maturity, or default. Commenters also alleged that OneWest Bank prohibited the spouse and other related parties to deceased reverse mortgage loan borrowers from satisfying the mortgage and retaining the property, and improperly required the estates of reverse mortgage loan borrowers to record trusts in public property records. Commenters also contended that OneWest Bank inflated property appraisals and thereby frustrated the efforts of the surviving spouse and heirs of deceased reverse mortgage loan borrowers to keep their family homes.³³ Some commenters also alleged that OneWest Bank has allowed its stock of foreclosed real property to fall into disrepair and thereby has contributed to blight in, and adversely affected, the relevant communities.

B. The Businesses of the Involved Institutions

CIT Group is primarily a commercial lender that provides financing, leasing, and advisory services to middle market companies in North America in a variety of industries, and equipment financing and leasing to companies worldwide in the transportation industry. CIT Group is among the largest originators of Small Business Administration (“SBA”) 7(a) loans, which help start-up and existing small businesses. Consistent with the consolidated organization’s business focus, CIT Bank offers commercial credit products to middle market companies in various industries throughout the United States, with commercial and industrial loans making up approximately 70 percent, while residential real estate loans making up only 3 percent, of the bank’s total loan portfolio.³⁴ While CIT Bank does not make a significant amount of small business loans within its Salt Lake City, Utah, assessment area, almost 9 percent of CIT Bank’s small business loans originated nationally were originated to businesses located in LMI census tracts.

IMB Holdco and OneWest Bank were organized to acquire assets and assume deposits of the failed IndyMac Bank, F.S.B. (“IndyMac”), from the Federal Deposit Insurance Corporation (“FDIC”).³⁵ OneWest Bank operates throughout Southern California, providing a broad range of traditional retail and commercial banking products and services through a network of 73 branches. Currently, approximately 60 percent of total loans at OneWest Bank are loans obtained from the acquisitions of IndyMac and two other institutions from the FDIC.³⁶ OneWest Bank has been focusing its efforts on transforming from a thrift to a commercial bank.³⁷ Most of the loans originated by OneWest Bank through its own opera-

³² For example, commenters alleged that, on the basis of performance data reported by servicers participating in the Home Affordable Modification Program (“HAMP”), OneWest Bank was more likely to foreclose on its borrowers than other banks.

³³ Under regulations of the Department of Housing and Urban Development, when a reverse mortgage loan is due and payable (e.g., after the death of the borrower), a surviving nonborrowing spouse can elect to satisfy the mortgage and retain the property securing the loan for the lesser of the unpaid principal balance or 95 percent of the property’s appraised value. See 26 CFR 206.125(a); Department of Housing and Urban Development, Mortgagee Letter No. 2015-15 (June 12, 2015), available at portal.hud.gov/hudportal/documents/huddoc?id=15-15ml.pdf.

³⁴ CIT Bank, Consolidated Report of Condition and Income, at 18 (data as of March 31, 2015).

³⁵ OneWest Bank also acquired assets and assumed deposits of two failed depository institutions, La Jolla Bank, FSB, of Rancho Santa Fe, and First Federal Bank of California, F.S.B., of Santa Monica, all in California.

³⁶ Although one-to-four family residential loans represent approximately 55 percent of total loans, many of these loans were acquired in the acquisitions mentioned above.

³⁷ OneWest Bank also has sold its third-party residential mortgage servicing rights, exited the prepaid card business, and continues to explore a sale of Financial Freedom Acquisition LLC (“Financial Freedom”), a subsidiary of OneWest Bank engaged in the reverse mortgage loan business.

tions have focused on commercial lending and commercial real estate lending, although the bank continues to offer retail and consumer products and services.

C. Records of 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,³⁸ 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 LMI neighborhoods.³⁹ In addition to compliance with the requirements of the CRA, fair lending 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 evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance of the relevant institutions.⁴⁰ 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.⁴¹ 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 of home mortgage loans to low-, moderate-, middle-, and upper income individuals;⁴² 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 assigned to the bank's performance, as well as the bank's rating on the lending test, to be

³⁸ 12 U.S.C. § 2901(b).

³⁹ 12 U.S.C. § 2903.

⁴⁰ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (March 11, 2010).

⁴¹ 12 U.S.C. § 2906.

⁴² 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).

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 CIT Bank. CIT Bank was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of March 18, 2013 (“CIT Bank Evaluation”).⁴³ Examiners noted that the bank originated an adequate amount of community development loans, which supported affordable housing, revitalization, and stabilization in the bank’s assessment area.⁴⁴ Examiners also found the level of qualified investments and grants to be responsive to the community development needs of the bank’s assessment area and broader statewide area. Examiners found CIT Bank’s provision of community development services to be adequate.⁴⁵ Examiners did note, however, that CIT Bank made only limited use of innovative or complex qualified investments.

CIT Bank’s efforts since the 2013 CRA Evaluation. Since the CIT Bank Evaluation, CIT Bank has implemented an FDIC-approved CRA strategic plan that CIT Group contends includes measurable goals to obtain an outstanding CRA rating.⁴⁶ CIT Group stated that CIT Bank increased its community development loans and investment activities in 2013 and 2014 to a level that exceeded the target level needed to obtain an outstanding CRA rating under the strategic plan.⁴⁷ Similarly, CIT Group reported that the level of community development services provided by CIT Bank’s employees in 2013 and 2014 exceeded the target number of hours needed to obtain an outstanding CRA rating.

CIT Group noted that the organization is a major commercial lender and helps meet the credit needs of the communities it serves, consistent with its business focus, through, among other things, small business lending. CIT Group is the largest originator of SBA 7(a) loans in the United States and also originates SBA 504 certified development company program loans. These loans help start-up and existing small businesses with financing guaranteed for a variety of general business purposes and encourage economic development within a community by providing small businesses with long-term, fixed-rate financing to acquire major fixed assets for expansion or modernization. Moreover, the CIT organization has been among the top small business lenders in the United States and has targeted its lending to, among others, women-, veteran-, and minority-owned businesses.

CRA Performance of OneWest Bank. OneWest Bank was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the OCC, as of February 6, 2012

⁴³ CIT Bank is a limited purpose bank for purposes of the CRA and was evaluated under the community development test. The evaluation period for the CIT Bank Evaluation was from November 15, 2010, through December 31, 2012. Examiners reviewed the level of CIT Bank’s qualified community development loans, investments, grants, and services in the bank’s designated assessment area of Salt Lake County, Utah. Examiners also evaluated the qualified community development activities of CIT Group over the same evaluation period.

⁴⁴ Several commenters criticized CIT Bank for designating Salt Lake County, Utah, as its CRA assessment area while soliciting deposits nationwide. Under the CRA, depository institutions delineate their own assessment areas, subject to certain criteria, and examiners investigate whether the examined institution’s assessment areas comply with these criteria. *See, e.g.*, 12 CFR 228.41. In addition, when examining a limited purpose bank such as CIT Bank under the CRA, examiners consider community development activities engaged in by the bank outside its assessment areas if the bank has adequately addressed the needs of its assessment areas. *See, e.g.*, 12 CFR 228.25(e).

⁴⁵ The bank’s employees volunteered their skills and expertise to the credit committees and boards of a number of local nonprofit organizations that primarily served the needs of LMI families in the assessment area.

⁴⁶ The CRA regulations provide that the appropriate federal banking agency will assess a bank’s record of meeting the credit needs of its assessment areas under a strategic plan if, among other things, the bank invites public comment on the plan and the plan is approved by such agency. The FDIC approved CIT Bank’s strategic plan dated January 2013, pursuant to 12 CFR 345.27.

⁴⁷ CIT Bank reported that it made its community investments in nonprofit organizations focusing on supporting affordable housing; alleviating poverty, homelessness, and unemployment; promoting community development; and providing foreclosure counseling.

(“OneWest Bank Evaluation”).⁴⁸ OneWest Bank received a “High Satisfactory” rating for the Lending Test, a “Low Satisfactory” rating on the Investment Test, and a “High Satisfactory” rating on the Service Test.⁴⁹ Examiners noted that OneWest Bank’s geographic distribution of loans was excellent and that the bank’s community development lending performance was good.

Examiners noted that OneWest Bank’s overall lending levels reflected adequate responsiveness to assessment area credit needs given the bank’s business strategy, volume of lending, and competition.⁵⁰ Examiners found that the bank’s geographic distribution of home mortgage loans, home refinance lending, and home purchase lending was excellent, and that the bank’s distribution of multifamily lending was good. Examiners also noted that OneWest Bank exhibited good community development lending performance. Examiners found that the bank engaged in a high volume of community development lending that addressed identified community needs and made extensive use of flexible and innovative lending products, primarily a large offering of loss mitigation programs throughout all assessment areas.

Examiners rated the bank’s performance under the Investment Test as “Low Satisfactory,” with the dollar volume of qualifying investments, grants, and donations being viewed as adequate.⁵¹ Nevertheless, examiners noted that the bank’s investment activities exhibited good responsiveness to the credit and community development needs of the Los Angeles AA.⁵² Moreover, examiners noted the bank’s commitment to help meet identified community development needs, including through the bank management’s role in leading the “Steps to Success” program, which promotes financial literacy among LMI and at-risk youth in the Los Angeles AA. Examiners called the program “innovative” and “the only one of its kind.”

In evaluating the Service Test, examiners found that the bank’s branch distribution in its assessment areas was good, with 13 percent of all branches located in LMI census tracts.

⁴⁸ The OneWest Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation period for the OneWest Bank Evaluation was from March 19, 2009, through September 30, 2011. At the request of OneWest Bank’s management, examiners also considered HMDA-reportable loans originated by Financial Freedom.

⁴⁹ The OneWest Bank Evaluation included a full-scope assessment review of the Los Angeles–Long Beach–Glendale, California Metropolitan Division (“Los Angeles AA”). A limited-scope review was performed in the Oxnard–Thousand Oaks–Ventura, California Metropolitan Statistical Area (“MSA”); the Riverside–San Bernardino–Ontario, California MSA; the San Diego–Carlsbad–San Marcos, California MSA; and the Santa Ana–Anaheim–Irvine, California Metropolitan Division.

⁵⁰ With respect to the Lending Test, examiners placed more weight on OneWest Bank’s performance in the Los Angeles AA. Examiners noted that while the bank held a 4.72 percent market share by total dollars of deposits in the Los Angeles AA, it only held a 0.23 percent market share of HMDA loans. Examiners found this disparity to be reasonably explained on two bases. First, the Los Angeles AA saw high competition in mortgage lending, as several major banks were the dominant home mortgage lenders in the area. Second, the bank’s business focus was on improving the performance of existing loans through modification programs, such as HAMP, rather than on loan origination.

⁵¹ Some commenters alleged that OneWest Bank has a poor record of charitable donations compared to peer institutions. The Board notes that neither the CRA nor the agencies’ implementing rules require that institutions engage in charitable giving.

⁵² For example, within the Los Angeles AA, the bank invested in Low Income Housing Tax Credits (“LIHTC”) that helped fund an affordable housing project and placed deposits with nine different minority-owned financial institutions. See 26 U.S.C. § 42.

Commenters criticized OneWest Bank for investing primarily in CRA-qualifying mortgage-backed securities and not making equity equivalent investments. In addition, a number of commenters alleged that CIT Group and OneWest Bank provided grants to organizations in return for their support of the merger proposal and refused to invest in or lend to organizations that opposed the proposal. The CRA does not require that institutions meet the credit needs of the communities they serve by making equity equivalent investments and does not authorize the federal banking agencies to direct a bank’s community development investment or lending activities to specific groups, individuals, projects, or types of investments.

Examiners noted that the operating hours of the bank's branches were generally similar at all locations, regardless of the income level of the geography. Examiners observed that, during the evaluation period in the Los Angeles AA, OneWest Bank provided a relatively high level of community development services that were responsive to a variety of community development needs and that the bank's board and management had developed relationships to ensure continued innovative and sustainable community development services.⁵³

OneWest Bank's efforts since the 2012 CRA Evaluation. CIT Group represented that since OneWest Bank's last CRA evaluation, the bank increased its community development lending almost tenfold. In terms of services, OneWest Bank employees have provided numerous hours of community service since 2011. OneWest Bank also has partnered with Operation HOPE, a nonprofit entity that teaches financial literacy, to create the Hope Inside program, which offers small business counseling at OneWest Bank's Northridge, California, branch office. In addition, OneWest Bank has more than doubled its amount of LIHTC commitments, and the bank's affordable housing investments have resulted in the creation of numerous affordable housing units. OneWest Bank also has provided grants that have allowed numerous individuals to receive homebuyer education and foreclosure prevention counseling.

CRA Efforts of the Combined Organization. CIT Group represents that the combined bank would implement a community benefits plan to help meet the needs of the combined bank's CRA assessment areas.⁵⁴ Under that plan, the combined bank would extend \$3.8 billion in CRA-reportable lending in its assessment areas; meet or exceed peer benchmarks for lending to LMI borrowers and in LMI census tracts; achieve Preferred Lender status under the SBA Preferred Lenders Program; develop a small business loan and technical assistance referral program to refer businesses to community development financial

⁵³ Technical and financial assistance provided included fundraising, financial education, and service on various boards of directors with organizations whose primary focus was providing assistance to LMI individuals. The bank also provided education to customers seeking loan modifications through videos and information posted on the bank's website.

Some commenters criticized OneWest Bank for not providing checking accounts for LMI consumers, alleging that OneWest Bank requires that customers make an initial deposit of at least \$100 and maintain a \$1,000 deposit balance to receive paper account statements without paying a monthly fee. CIT Group represents that the combined bank will reduce its affordable checking account opening balance requirement to \$25.

Some commenters urged OneWest Bank to commit to waiving ATM fees for public assistance recipients. Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available on certain terms or at certain rates, the CRA neither requires an institution to provide any specific types of products or services nor prescribes the costs charged for them.

⁵⁴ A number of commenters criticized CIT Group's CRA plan for the combined bank, alleging that the CRA plan sets lower CRA activity goals than commitments made by other banks operating in southern California. A commenter alleged that CIT Group underreported the combined bank's California deposits, thereby making it more difficult to compare the combined bank's proposed CRA activities with that of other depository institutions. Another commenter alleged that the CRA plan for the combined organization proposes fewer CRA activities than had been committed by the proposed president and chief executive officer of the combined bank during his service as an executive at another financial institution.

The Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. *See, e.g., Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002); *Fifth Third Bancorp*, 80 *Federal Reserve Bulletin* 838, 841(1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas.

Some commenters alleged that OneWest Bank is performing poorly compared to the goals set in the bank's existing CRA strategic plan. This plan is not intended to form the basis for the OCC's evaluation of the combined bank's CRA performance pursuant to 12 CFR 25.27. The OCC will examine the combined bank under the CRA lending, investment, and service tests applicable to large banks.

Commenters expressed concerns that the combined bank's CRA assessment areas will not include the entire area from which the combined bank solicits deposits. As noted above, CIT Bank solicits, and the combined bank expects to solicit, deposits nationwide through the Internet. As noted above, under the CRA, depository institutions delineate their own assessment areas, subject to certain criteria, and examiners investigate whether the examined institution's assessment areas comply with these criteria. *See, e.g., 12 CFR 228.41.*

institutions; and develop a policy to prefer nonprofit organizations when selling certain real estate and distressed loans originated by the combined bank.

CIT Group also represents that the combined bank would make CRA qualified investments at a level of 8 percent of tier 1 deployed capital and would donate \$5 million annually to nonprofit organizations that provide or support affordable housing, education, financial literacy, workforce development, health and human services to LMI individuals, programs for at-risk youth, and technical assistance for small business owners. In addition, CIT Group stated that the combined bank would locate 15 percent of its branches and ATMs in LMI census tracts and would provide 2,100 hours of CRA volunteer service.

CIT Group has represented that OneWest Bank's commercial and consumer lending platforms would complement CIT Group's small and middle market financing platforms. CIT Group further asserts that the proposal would accelerate CIT Group's transformation into a more traditional commercial banking organization with a balanced retail and commercial operation that includes OneWest Bank's traditional retail branch deposit-funding base.

In response to allegations regarding CIT Bank's CRA performance, CIT Group noted that CIT Bank received a "Satisfactory" rating in its most recent CRA public evaluation. Moreover, CIT Group stated that the enhanced lending and earning capacity of the combined organization would improve its ability to meet its CRA obligations.

OneWest Bank's activities in LMI communities largely reflect the branch network of the institutions whose assets and liabilities OneWest Bank has acquired. Since its formation, OneWest Bank has taken steps to increase its presence in LMI communities, including through partnerships with businesses located in these communities.

OneWest Bank's small business lending to businesses with less than \$1 million in revenues is in line with peer institutions. Moreover, OneWest Bank is a significant participant in the SBA's 504 Loan Program, which provides financing for major fixed assets such as equipment and real estate; these SBA loans tend to be larger in size and, consequently, tend to be made to businesses with more than \$1 million in annual revenues. Moreover, CIT Group is one of the largest SBA lenders.

In response to commenters' contention that OneWest Bank has a poor record in mortgage foreclosures and reverse mortgage loan servicing, OneWest Bank argued that many of the alleged mortgage servicing issues relate back to practices engaged in by IndyMac prior to OneWest Bank's acquisition of IndyMac assets from the FDIC as receiver of IndyMac. OneWest Bank also noted that, as part of a mortgage foreclosure Consent Order with the OCC, the bank remediated harms resulting from past deficiencies in connection with the Independent Foreclosure Review and instituted extensive changes to its residential mortgage servicing and foreclosure activities to ensure that these activities are conducted in a safe and sound manner going forward.⁵⁵

⁵⁵ The Consent Order resulted from interagency on-site reviews of several mortgage servicing companies, including OneWest Bank, that found critical weaknesses in these servicers' mortgage servicing and foreclosure processes that resulted in unsafe and unsound practices. OneWest Bank and the Office of Thrift Supervision entered into the order on April 13, 2011, relating to the bank's mortgage servicing and foreclosure activities. In connection with OneWest Bank's conversion into a national bank, the order's terms were fully incorporated into a Consent Order issued by the OCC against OneWest Bank on March 11, 2014.

Between April 2011 and April 2012, the OCC and the Board issued enforcement actions against 15 mortgage loan servicers in addition to OneWest Bank for deficient practices in mortgage loan servicing and foreclosure processing. In addition to mandating the correction of servicing practices, the actions required the servicers to hire independent consultants to conduct file reviews to determine if borrowers suffered financial injury and were eligible for financial remediation.

As part of its approval of the bank merger, the OCC has required the combined bank to submit a revised public CRA plan, with input from members of the public, for the OCC's review and written determination of no supervisory objection.⁵⁶ In particular, the plan must, among other things, provide details concerning the actions the bank will take to ensure that on a prospective basis the bank is helping to meet the credit needs of its assessment area, including details regarding affordable multifamily housing lending, small business lending in LMI geographies, and investments targeted towards LMI geographies and individuals. The revised plan also must contain measurable annual goals and timetables for the achievement of those goals. In addition, the bank must provide reports to the OCC indicating the results of the bank's efforts to implement the plan.⁵⁷

Branching. Some commenters criticized OneWest Bank's distribution of branches in low-income census tracts, alleging that two of OneWest Bank's 73 branches were in such census tracts. As noted in the OneWest Bank Evaluation, OCC examiners found that 11 middle- and upper-income branches in the bank's assessment areas have at least 33 percent or more LMI family population, and that OneWest Bank serves a larger portion of the LMI population due to the large percentage of LMI families residing in the various census tracts.

Some commenters alleged that OneWest Bank has a disproportionately low number of branches in minority neighborhoods. OneWest Bank's branch network was inherited from IndyMac and two other failed depository institutions. OneWest Bank's policy on branching recognizes the potential impact of any branch openings, closures, consolidations, and relocations on minority residents.

Several commenters expressed concerns about OneWest Bank's record of branch closings, alleging that OneWest Bank's branch closings in the last five years have had a disproportionately negative effect on LMI and minority neighborhoods. In the OneWest Bank Evaluation, OCC examiners noted that the bank's closing and opening of branches in the assessment areas receiving full-scope reviews did not adversely affect the accessibility of branches, particularly in LMI geographies. During the evaluation period, OneWest Bank consolidated three branches and relocated one branch, all within upper-income census tracts. Moreover, the Board has considered the fact that federal banking law provides a specific mechanism for addressing branch closings, including the provision of notice to the public and the appropriate federal supervisory agency before the branch is closed.⁵⁸

A commenter criticized CIT Group for not committing to open new branches in underserved neighborhoods, and a number of commenters expressed concerns that planned

⁵⁶ Some commenters expressed concerns that the combined bank would seek to serve LMI neighborhoods using technology and mobile banking rather than through branches and ATMs. In addition, a number of commenters requested that the combined bank introduce more products targeted to LMI customers. The revised plan is required to describe how the combined bank's alternative systems for delivering retail banking services will effectively provide needed retail banking services in LMI geographies or to LMI individuals. In addition, as noted above, although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available, the CRA does not require an institution to provide any specific products or services.

⁵⁷ The OCC is also requiring the combined bank to submit a comprehensive business plan for the agency's prior written determination of no supervisory objection. The business plan must, among other things, address the lending activities in which the bank plans to engage (along with the relevant credit policies and procedures to address all aspects of credit underwriting, credit administration, and loan portfolio management) and provide a plan to meet identified goals and objectives (along with target dates and an identification of processes, personnel, and control systems).

⁵⁸ See 12 U.S.C. § 1831r-1, as implemented by the *Joint Policy Statement Regarding Branch Closings*, 64 *Federal Register* 34844 (June 29, 1999). The Joint Policy Statement requires that a bank provide the public with at least 30 days' notice and the appropriate federal supervisory agency with at least 90 days' notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

branch consolidations by the combined bank would have a negative effect on LMI neighborhoods. OneWest Bank expects to complete four branch relocations in 2015. One branch was relocated from an upper-income census tract to a middle-income census tract, two branches will be relocated from middle-income census tracts to moderate-income census tracts, and one branch will move to a new location within its low-income census tract. The federal banking supervisory agencies evaluate a bank's record of opening and closing branches, particularly branches located in LMI geographies or primarily serving LMI individuals, as part of the CRA examination process.⁵⁹

D. Fair Lending Compliance

The Board has considered the records of CIT Bank and OneWest Bank in complying with fair lending and other consumer protection laws.⁶⁰ As part of its evaluation, the Board reviewed CIT Bank's and OneWest Bank's records of performance under fair lending laws, the comments received on the proposal, CIT Group's responses, and other supervisory information.

Fair Lending Allegations and Response. As noted, commenters alleged that OneWest Bank made a disproportionately low number of home mortgage loans to Asian and African American borrowers in the Los Angeles, California, area, based on 2012 HMDA data. A commenter alleged that in 2012 and 2013, OneWest Bank made a disproportionately low dollar amount of its SBA loans in California to African American-owned businesses. It was also alleged that in 2012, OneWest Bank did not originate any single family mortgage purchase loans or home improvement loans to African American borrowers in the Los Angeles area.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.⁶¹ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

In response to these concerns, OneWest Bank argued that OneWest Bank, particularly in 2012, engaged in limited new loan originations. In particular, the bank made only 81 single-family mortgage purchase originations nationwide in 2012. OneWest Bank also contended that 2013 HMDA data on single-family mortgage loan refinancing in the Los Angeles assessment area demonstrate that, in that period, the bank had an 87.3-percent approval rate for African-American applicants, which exceeded its approval rate for white applicants.⁶² In 2013, 78 percent of OneWest Bank's small business loans were made in major-

⁵⁹ See, e.g., 12 CFR 228.24(d)(2). In addition, the Board notes that the OCC, as the primary federal supervisor of the combined bank, will continue to review the bank's branch closing record in the course of conducting CRA performance evaluations.

⁶⁰ A number of commenters alleged that OneWest Bank accelerated foreclosure proceedings or otherwise retaliated against commenters who opposed the proposal. OneWest Bank has represented that it has not retaliated against any commenters and has not changed its processes for servicing mortgage loans. Regarding each alleged case of retaliation, the bank has provided the OCC with confidential information to show that there were legitimate reasons for its actions. The OCC has reviewed and assessed the adequacy of the bank's responses and did not conclude that these allegations justified denial of the bank merger involved in this proposal.

⁶¹ Other data relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

⁶² As noted in the OneWest Bank Evaluation, OneWest Bank held a 4.72-percent market share by total dollars of deposits in the Los Angeles AA but only held a 0.23 percent market share of HMDA loans. Examiners found

ity-minority census tracts. In addition, Asian-owned banks and other lenders attract a significant portion of the applications from Asian borrowers in California and, as a result, the lending patterns to Asian borrowers in California may reflect a competitive mortgage lending market rather than discriminatory lending practices.⁶³

CIT Group's and OneWest Bank's Fair Lending Program. CIT Group and OneWest Bank have both instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. CIT Group has stated that, on consummation, CIT Group's existing risk-management framework would be implemented at the combined organization and OneWest Bank's existing fair lending program would be implemented at the combined bank, supplemented appropriately to reflect the organizations' new business profile.

OneWest Bank provides fair lending training and education for all employees. The training includes programs on the bank's policies and procedures as well as applicable fair lending laws.

The two organizations' legal and compliance risk-management programs include a fair lending risk assessment that is updated annually or more frequently, based on material changes to the bank's strategy, operations, products, or services. OneWest Bank's assessment includes an evaluation of the risk of OneWest Bank's lending activities, along with an assessment of the quality of the controls and the resulting residual risk. Through the risk assessment, OneWest Bank identifies areas of higher fair lending risk and conducts targeted compliance reviews of these areas.

OneWest Bank's Fair and Responsible Lending Department conducts an annual comparative file review. In this review, the Department evaluates loan files for mortgage applicants in protected classes against loan files for similarly situated applicants who are not in a protected class to detect possible disparate treatment with respect to credit decisions and pricing. CIT Group represents that OneWest Bank's comparative file reviews have not identified concerns related to discrimination against applicants in protected classes.

OneWest Bank maintains a secondary review process for all denied mortgage 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 applicant was not denied based on any prohibited basis.

E. Mortgage Loan Servicing, Modification, and Foreclosure Practices

As noted, a large number of commenters expressed concerns about OneWest Bank's mortgage servicing, loan modification, and foreclosure processing activities, with some making assertions about individual wrongful treatment and suggesting an overall practice of wrongful conduct such as failure to maintain foreclosed property in minority neighborhoods.⁶⁴ The issues raised by the commenters relating to OneWest Bank's mortgage servicing, loan modification, and foreclosure processing activities are of concern to the Board. In evaluating the issues raised by the commenters, the views of the bank's primary regulators

this disparity to be reasonably explained on two bases. First, the Los Angeles AA saw high competition in mortgage lending, as several major banks were the dominant home mortgage lenders in the area. Second, the bank's business focus was on improving the performance of existing loans through modification programs, such as HAMP, rather than on loan origination.

⁶³ See *Umpqua Holdings Corporation*, FRB Order No. 2014-2 at 23 n.46 (April 1, 2014).

⁶⁴ In particular, some commenters alleged that OneWest Bank's foreclosure practices disproportionately affected minority individuals, senior citizens, and women.

are particularly important considerations to the Board because of the primary regulator's proximity to, and access to information regarding, the institution.

The Board has consulted OneWest Bank's primary federal banking regulator, the OCC. Issues raised by the commenters relating to OneWest Bank's mortgage servicing, loan modification, and foreclosure processing activities were addressed as part of a review of the bank's compliance with a Consent Order issued by the OCC against OneWest Bank relating to mortgage servicing and foreclosure practices. Specifically, the OCC reviewed the mortgage servicing and the initiation and handling of foreclosure proceedings by OneWest Bank as part of the agency's assessment of the bank's compliance with the Consent Order, including the bank's implementation of appropriate policies and procedures. Under the Consent Order, OneWest Bank was required, among other things, to have an independent consultant review and identify borrowers financially harmed by the bank's deficient practices in mortgage servicing and foreclosure processing, and to provide remediation to harmed borrowers.

To accomplish this, OneWest Bank was required to retain an independent consultant to conduct comprehensive reviews of the bank's foreclosure activity to identify whether borrowers whose mortgages were serviced by the bank and whose homes were in the foreclosure process during 2009 or 2010 ("in-scope borrowers") suffered financial injury because of servicer errors, omissions, or other deficiencies.⁶⁵ The review for OneWest Bank encompassed an in-scope population of more than 192,000 borrower loan files.⁶⁶ Once the reviews of borrowers' foreclosure actions had been completed, the independent consultant determined the number of injured borrowers who were eligible for compensation, and OneWest Bank made payments to injured borrowers.⁶⁷ As of June 30, 2015, OneWest Bank borrowers have received payments totaling approximately \$12.25 million, which represent approximately 96 percent of the bank's total expected remediation of approximately \$12.8 million.

In addition, to address shortcomings with its mortgage servicing and foreclosure processing activities, OneWest Bank was required, among other things, to implement (i) acceptable action plans to ensure effective mortgage servicing, foreclosure, and loss mitigation activities; (ii) a satisfactory compliance program to ensure that mortgage servicing and foreclosure operations comply with all applicable legal requirements; (iii) third-party vendor quality control policies and procedures to ensure adequate oversight of any third-party service providers that perform foreclosure or related functions;⁶⁸ and (iv) a plan to ensure the

⁶⁵ Under the Independent Foreclosure Review, before proceeding with the file reviews, the banking organizations submitted proposals outlining the independent consultants they wished to engage, which were subject to non-objection determinations by the regulators. The independent consultants' engagement letters were subject to extensive review and revision prior to acceptance by the agencies. The servicers, including OneWest Bank, also were required to contact all in-scope borrowers and provide them with the opportunity to request a review of their foreclosure action by an independent consultant to determine whether the borrower suffered financial injury because of errors by their servicer and potentially receive remediation.

⁶⁶ The in-scope population included residential foreclosure actions or proceedings (including foreclosures that were in process or completed) for loans serviced by OneWest Bank that had been pending at any time from January 1, 2009, to December 31, 2010, as well as residential foreclosure sales that occurred during this time period.

⁶⁷ The appropriate amount of compensation to be provided to borrowers was based on financial remediation guidance issued by the regulators for general categories of harm and was not intended to replace the type of specific finding of actual harm or losses that might be determined by a court. See Press Release, Board of Governors of the Federal Reserve System, Agencies Release Financial Remediation Guidance, Extend Deadline for Requesting a Free Independent Foreclosure Review to September 30, 2012, (June 21, 2012), available at www.federalreserve.gov/newsevents/press/bcreg/20120621a.htm.

⁶⁸ As part of the compliance plan, OneWest Bank was required to implement acceptable policies and procedures for outsourcing foreclosure or related functions such as property management of real estate acquired through or in lieu of foreclosure, to ensure that the bank's mortgage servicing and foreclosure activities are conducted in a safe and sound manner.

timely delivery of accurate information to borrowers in foreclosure, loss mitigation, and loan modification activities.

The OCC has conducted targeted examinations of OneWest Bank's efforts to satisfy the terms of the Consent Order, including efforts to develop a compliance program for the bank's servicing and foreclosure operations and to implement effective policy and procedural changes to achieve compliance with the provisions of the Consent Order; commitment of resources to address and correct identified servicing deficiencies; and completion of the Independent Foreclosure Review. Based on these examinations and other supervisory information, the OCC determined that OneWest Bank had satisfied all of the requirements related to its mortgage servicing and foreclosure processing activities and had a program and associated policies and procedures that are satisfactory from a supervisory perspective. Consequently, the OCC lifted the Consent Order⁶⁹ effective July 14, 2015.⁷⁰ In addition, the OCC has approved the merger of OneWest Bank and CIT Bank on July 21, 2015.

F. Additional Information on Convenience and Needs 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.⁷¹ CIT Group represents that the proposal would provide customers of the combined organization access to an expanded suite of products and services that are not currently available from either organization on a standalone basis. For example, CIT Group represents that IMB Holdco's existing customers would have access to CIT Group's wider suite of business financing products, such as small-ticket leasing, commercial lending, and factoring products. In addition, CIT Group represents that CIT Group's existing customers would have access to OneWest Bank's deposit and cash management services, and CIT Group's smaller business customers would have access to additional products and services

⁶⁹ IMB Holdco is subject to a Consent Order overseen by the Board that requires enhanced oversight of mortgage servicing and foreclosure processing. The Board is monitoring the sustainability of the remediation implemented by IMB Holdco to comply with the Consent Order. CIT Group, as IMB Holdco's successor, would become subject to the Consent Order upon consummation of the proposed transaction and has stated that it would comply with the requirements of the Consent Order.

⁷⁰ A number of commenters urged CIT Group to commit to the Board to improve its mortgage servicing and foreclosure practices.

Commenters also noted several other judicial proceedings to which OneWest Bank is a party that allege wrongful conduct by OneWest Bank relating to mortgage foreclosure and servicing, including dual tracking. In addition, some commenters noted a lawsuit filed against OneWest Bank under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, *United States ex rel. Fisher v. OneWest Bank, FSB*, No.1:12-cv-09352-CM (S.D.N.Y.2015), alleging that OneWest Bank made false certifications regarding consumer disclosures in connection with the HAMP loan modification program. The case was voluntarily dismissed without prejudice by the relator.

⁷¹ As noted above, a number of commenters alleged that the proposal would not provide a clear or significant public benefit. Many of these commenters suggested that the involved institutions' receipt of public assistance—i.e., loss-share agreements with the FDIC in the case of OneWest Bank and a default by CIT Group on funds received under the Troubled Asset Relief Program Capital Purchase Program ("TARP CPP")—indicate that the proposal should result a higher that usual showing of public benefits. In addition, a number of commenters criticized CIT Group's plans to use OneWest Bank's tax attributes to reduce CIT Group's taxable income. Commenters also alleged that the transfer of OneWest Bank's loss-share agreements from IMB Holdco to CIT Group serves no public purpose.

The FDIC's administration of its authorities as receiver of failed depository institutions, including its decisions to enter into loss-share agreements with purchasing institutions and any transfer of these agreements in subsequent merger transactions, is a subject solely within the purview of the FDIC. Similarly, the decision to provide assistance to a banking organization through the TARP CPP, the permissible use of tax attributes to reduce taxable income, and a Bankruptcy Court's decision to confirm a plan of reorganization that eliminates the obligation to repay the TARP CPP assistance, are solely within the purview of the Department of the Treasury and the relevant Bankruptcy Court, respectively. The Board believes that these matters are not within the Board's limited jurisdiction to adjudicate and do not relate to factors that the Board may consider when reviewing an application under the BHC Act. *See Western Bancshares.*

from OneWest Bank's lending platform. Further, CIT Group stated that the combined organization would be strengthened by the complementary aspects of the two entities' businesses—namely, CIT Group's nationwide small and middle-market commercial lending and leasing platform and OneWest Bank's regional commercial and consumer branch banking platform—resulting in a stronger and more stable franchise.

G. Conclusion on Convenience and Needs Considerations

The Board recognizes that this proposal represents a sizeable expansion by CIT Group. Accordingly, an important component of the Board's review of the proposal has been its consideration of the effects of the proposal on the convenience and needs of all communities served by CIT Group, IMB Holdco, and OneWest Bank.

In conducting its review, the Board has weighed the concerns expressed by the commenters in light of all the facts of record, including the overall CRA records of CIT Bank and OneWest Bank, and the Board's consultations with OneWest Bank's supervisors, the OCC and CFPB. A significant number of commenters have expressed support for the proposal based on the records of CIT Bank and OneWest Bank in helping to serve the banking needs of their entire communities, including LMI areas. Other commenters have expressed concerns about specific aspects of CIT Bank's and OneWest Bank's records of performance under the CRA in their current service areas and have expressed reservations about whether the combined organization would be responsive to the banking and credit needs of all of its communities, especially in southern California. Commenters also have expressed concerns about OneWest Bank's compliance with the law and its treatment of borrowers in its mortgage servicing and foreclosure activities. The Board has considered these concerns and weighed them against the overall CRA records of CIT Bank and OneWest Bank; the institutions' records of compliance with fair lending and other consumer protection laws; consultations with the CFPB and OCC; confidential supervisory information; information provided by CIT Group, including its responses to comments; and the public comments on the proposal.

Based on that review, the Board believes that the proposed acquisition of OneWest Bank by CIT Group would result in public benefits and that the convenience and needs factor is consistent with approval. The Board expects the CIT Group to engage in activities that help to meet the credit needs of the communities CIT Group serves at a level commensurate with the expanded size and scope of the combined organization, consistent with safe and sound lending practices. The Board also expects CIT Group to support the combined bank in developing a comprehensive business plan and providing a more detailed CRA plan required by the OCC in connection with its approval of the merger between OneWest Bank and CIT Bank. The Board, along with other federal supervisors, will monitor these developments through the examination process.

Financial Stability

The 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.”⁷²

As discussed above, a number of commenters expressed concerns regarding the effect of the proposal on financial stability. These commenters generally asserted that the proposal

⁷² Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

would result in a too-big-to-fail institution given that the combined organization would have more than \$50 billion in assets. Commenters also alleged that CIT Group is materially interconnected with the economy and with other companies that are important to the stability of the financial system.⁷³

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.⁷⁴ 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.⁷⁵

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. Both the acquirer and the target are predominately engaged in retail commercial banking activities.⁷⁶ The combined organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress.⁷⁷ In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose significant risk to the financial system in the event of financial distress.

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

Request for Additional Public Meetings

Several commenters requested that the Board hold public meetings on the proposal in cities other than Los Angeles. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authorities for the

⁷³ Commenters also raised concerns about the amount of assets without observable market prices at the combined organization.

⁷⁴ Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system (“USFS”).

⁷⁵ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

⁷⁶ As noted, CIT Group is primarily a commercial lender, and OneWest Bank is primarily a retail bank engaged in residential mortgage activities.

⁷⁷ CIT Group does not currently engage, and as a result of this transaction would not engage, in business activities or participate in markets to a degree that would pose significant risk to other institutions in the event of financial distress of the combined entity. In addition, the combined entity’s shares of USFS intrafinancial system assets and liabilities are each less than 1 percent. Moreover, the Board has considered the amount of assets at the combined organization that would not have observable market prices and believes that these asset levels would not meaningfully contribute to the complexity of the USFS or make the combined organization materially vulnerable to financial market distress.

bank to be acquired make a timely written recommendation of denial of the application.⁷⁸ 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 requests in light of all the facts of record. In the Board's view, the commenters have had ample opportunity to provide testimony and submit comments on the proposal. As noted above, the Board and the OCC held a public meeting on the application, at which 111 persons gave testimony. Persons who could not attend in person were permitted to have their written comments presented by other participants at the meeting. Commenters submitted numerous written comments that the Board has considered in acting on the proposal. The requests do not identify disputed issues of fact material to the Board's decision that would be clarified by a further public meeting. In addition, the requests do not demonstrate why written comments do not present the commenters' views adequately or why a further meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that public meetings in cities other than Los Angeles are not required or warranted in this case. Accordingly, the requests for further public meetings on the proposal are denied.

In addition, several commenters requested a further extension of the comment period for the proposal. The Board's Rules of Procedure contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time.⁷⁹ The commenters' requests for additional time do not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the Board has determined not to extend further the public comment period.⁸⁰

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 con-

⁷⁸ 12 U.S.C. § 1842(b); 12 CFR 225.16(e).

⁷⁹ 12 CFR 262.25(b)(2).

⁸⁰ A number of commenters requested that the Board delay action on the proposal until (i) CIT Group commits to a community reinvestment plan negotiated with community groups, (ii) the FDIC makes public the results of its audit of OneWest Bank's compliance with the bank's loss-share agreements, (iii) certain commenters receive responses from federal and state agencies under applicable freedom of information laws, (iv) OneWest Bank halts foreclosing upon the property of certain reverse mortgage loan borrowers, or (v) the Board and the OCC verify that OneWest Bank offered loan modifications to all qualified borrowers before foreclosing on the borrower's property and collecting loss-share payments from the FDIC.

The Board believes that the record in this case does not warrant postponement of its consideration of the proposal. During the application process, the Board has accumulated a significant record, including reports of examination, supervisory information, public reports and information, and significant public comment. The Board believes this record is sufficient to allow it to assess the factors it is required to consider under the BHC Act. The BHC Act and the Board's rules establish time periods for consideration and action on proposals such as the current proposal. Moreover, as discussed more fully above, the CRA requires the Board to consider the existing record of performance of an organization and does not require that the organization enter into contracts or agreements with others to implement its CRA programs. For the reasons discussed above, the Board believes that commenters have had ample opportunity to submit their views and, in fact, they have provided ample written submissions and oral testimony that have been considered by the Board in acting on the proposal. Based on a review of all the facts of record, the Board concludes that delaying consideration of the proposal, granting another extension of the comment period, or denying the proposal on the grounds discussed above, including for informational insufficiency, is unwarranted.

The Board received multiple comments alleging that the Board's consideration of the proposal is precluded by the existence of a lawsuit filed against OneWest Bank under the False Claims Act. *United States ex rel. Beekman v. IndyMac Federal Bank, F.S.B.*, No. 9:12-cv-81138-JIC (S.D.Fla. 2015). This case has been dismissed with prejudice for failure to meet the applicable pleading standard.

sidered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by CIT Group with all of the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the 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 under delegated authority.

By order of the Board of Governors, effective July 19, 2015.

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

Robert deV. Frierson
Secretary of the Board

Banner Corporation
Walla Walla, Washington

Elements Merger Sub, LLC
Walla Walla, Washington

Order Approving the Acquisition of a Bank Holding Company
FRB Order N. 2015-23 (September 3, 2015)

Banner Corporation ("Banner") and Elements Merger Sub, LLC ("Merger Sub"), a wholly owned subsidiary of Banner, both of Walla Walla, Washington (together, "Applicants"), have requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")¹ to acquire Starbuck Bancshares, Inc. ("Starbuck"), Seattle, and thereby indirectly acquire its subsidiary, AmericanWest Bank, Spokane, both of Washington. Under the proposal, Starbuck would be merged into Merger Sub and AmericanWest Bank would be merged into Banner's wholly owned subsidiary, Banner Bank, also of Walla Walla; Merger Sub and Banner Bank would be the surviving entities.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (80 *Federal Register* 6517 (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.

Banner, with consolidated assets of approximately \$5.2 billion, is the 201st largest insured depository organization in the United States, controlling approximately \$4.3 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Banner controls Banner Bank, which

¹ 12 U.S.C. § 1842.

² The merger of AmericanWest Bank into Banner Bank is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC") under the Bank Merger Act. 12 U.S.C. § 1828(c).

³ 12 CFR 262.3(b).

operates in Washington, Idaho, and Oregon.⁴ Banner is the 11th largest depository organization in Washington, controlling approximately \$2.9 billion in deposits, the 18th largest insured depository institution in Idaho, controlling approximately \$234.5 million in deposits, and the 12th largest insured depository institution in Oregon, controlling approximately \$849.0 million in deposits, which represent 2.3, 1.1, and 1.4 percent, respectively, of the total deposits of insured depository institutions in those states.⁵

Starbuck, with consolidated assets of approximately \$4.6 billion, is the 213th largest insured depository organization in the United States, controlling approximately \$3.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Starbuck controls AmericanWest Bank, which operates in Washington, California, Idaho, Oregon, and Utah. Starbuck is the 16th largest depository organization in Washington, controlling approximately \$1.2 billion in deposits, the 21st largest insured depository institution in Idaho, controlling approximately \$173.1 million in deposits, and the 15th largest insured depository institution in Oregon, controlling approximately \$388.2 million in deposits, which represent 0.9, 0.8, and 0.6 percent, respectively, of the total deposits of insured depository institutions in those states.

On consummation of the proposal, Banner would become the 124th largest depository organization in the United States, with consolidated assets of approximately \$9.8 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. Banner would become the eighth largest depository organization in Washington, controlling approximately \$4.0 billion in deposits, the 15th largest insured depository institution in Idaho, controlling approximately \$407.6 million in deposits, and the 10th largest insured depository institution in Oregon, controlling approximately \$1.2 billion in deposits, which represent 3.3, 2.0, and 2.0 percent, respectively, of the total amount of deposits of insured depository institutions in those states.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.⁶ 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.⁷ 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

⁴ Banner also controls Islanders Bank, Friday Harbor, Washington, which operates three branches in Washington.

⁵ Nationwide data and rankings are as of June 30, 2015. State data and rankings are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings and loan associations.

⁶ 12 U.S.C. § 1842(d)(1)(A).

⁷ 12 U.S.C. § 1842(d)(1)(B). For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)-(7). Section 3(d) of the BHC Act applies to the acquisition by a bank holding company of a bank with the same home state as the bank holding company to the extent that the bank operates branches outside its home state.

in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.⁸

For purposes of the BHC Act, the home state of Banner is Washington and AmericanWest Bank's home state is Washington.⁹ AmericanWest Bank is also located in California, Idaho, Oregon, and Utah. Banner is well capitalized and well managed under applicable law and has a satisfactory Community Reinvestment Act rating.¹⁰ California and Utah do not have minimum age requirements that would apply to this transaction,¹¹ and Idaho and Oregon do not have minimum age requirements.¹²

On consummation of the proposed transactions, Banner would control less than 1 percent of the total amount of deposits in insured depository institutions in the United States. In addition, the combined organization would control approximately 3.3 percent of the total amount of deposits of insured depository institutions in AmericanWest Bank's home state, Washington. Banner and AmericanWest Bank also have overlapping banking operations in Idaho and Oregon, and the combined organization would control approximately 2.0 percent of the total amount of deposits of insured depository institutions in each of those states.¹³ 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.¹⁴

Banner Bank and AmericanWest Bank compete directly in the Idaho-Washington banking market of Lewiston, the Oregon banking market of Roseburg, the Washington-Idaho banking market of Spokane, the Washington-Oregon banking market of Walla Walla, and the Washington banking markets of Richland-Kennewick-Pasco, Seattle, Sunnyside, and Yakima.

⁸ 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.

⁹ 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.

¹⁰ 12 U.S.C. §§ 2901-2908.

¹¹ California imposes minimum age requirements only on the acquisition of a bank that is organized under the laws of California or that maintains its main office in California. Cal. Fin. Code §§ 147(a), 1685. The Board consulted with the Utah Department of Financial Institutions, which advised that the Utah minimum age requirements would not apply to the acquisition of a depository institution whose home state is not Utah but that has branches in Utah. Utah Code §§ 7-1-103(14), -703(7).

¹² Idaho Code § 26-1605; and Or. Rev. Stat. § 713.270.

¹³ Neither Idaho nor Oregon impose a deposit cap or concentration limit.

¹⁴ 12 U.S.C. § 1842(c)(1).

A. Competitive Effects in the Banking Markets

The Board has reviewed the competitive effects of the proposal in the banking markets in which Banner Bank and AmericanWest Bank compete. In particular, the Board has considered the number of competitors that would remain in the banking markets; the relative shares of the total deposits in insured depository institutions in the markets (“market deposits”) that would be controlled by Banner Bank and AmericanWest Bank;¹⁵ 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”);¹⁶ other characteristics of the markets; and, as discussed below, commitments made by Banner to divest one AmericanWest Bank branch in the Walla Walla banking market.

Banking Markets Within Established Guidelines. Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Lewiston, Spokane, Roseburg, Richland-Kennewick-Pasco, Seattle, and Yakima banking markets.¹⁷ On consummation of the proposal, the Lewiston, Spokane, Richland-Kennewick-Pasco, Seattle, and Yakima banking markets would remain moderately concentrated, and the changes in market concentrations would be well within the DOJ Bank Merger Guidelines and Board precedent. The Roseburg banking market would remain highly concentrated, as measured by the HHI, and the change in the HHI in the market would be small. In each of these banking markets, numerous competitors would remain.

Banking Markets Warranting Special Scrutiny. The structural effects that consummation of the proposal would have in the Sunnyside and Walla Walla banking markets¹⁸ warrant a detailed review because the concentration levels on consummation would exceed the threshold levels in the DOJ Bank Merger Guidelines when using initial competitive screening data.

Sunnyside Banking Market. Using the initial competitive screening data, Banner is the fourth largest depository organization in the Sunnyside banking market, controlling approximately \$56.5 million in deposits, which represent 11.4 percent of market deposits.

¹⁵ Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits data as of June 30, 2014, updated to reflect changes in ownership due to subsequent mergers and based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); 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).*

¹⁶ 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 have issued revised Horizontal Merger Guidelines, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

¹⁷ These six banking markets and the competitive effects of the proposal in these markets are described in the Appendix.

¹⁸ The Sunnyside banking market is defined as the southeastern corner of Yakima County and southwestern Benton County, including Grandview, Granger, Mabton, Outlook, Prosser, and Sunnyside, all of Washington. The Walla Walla banking market is defined as the Walla Walla metropolitan area in Walla Walla County and the southern portion of Columbia County, including College Place, Dayton, Dixie, Garrett, Waitsburg, Walla Walla, and Walla Walla East, all of Washington, and the northeastern corner of Umatilla County, including Milton-Freewater, both of Oregon.

Starbuck is the second largest depository organization in the market, controlling approximately \$87.0 million in deposits, which represent 17.5 percent of market deposits. On consummation, the combined entity would be the second largest depository organization in the Sunnyside banking market, controlling approximately \$143.5 million in deposits, which would represent approximately 28.9 percent of market deposits. The HHI in this market would increase by 399 points, from 1804 to 2203.

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 Sunnyside banking market.¹⁹ Factors indicate that the increase in concentration in the Sunnyside banking market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market. One thrift institution in the market has a commercial and industrial loan portfolio similar to those of commercial banks in the Sunnyside banking market,²⁰ as measured in terms of the ratios of those types of loans to total loans and assets.²¹ The Board has concluded that deposits controlled by this institution should be weighted at 100 percent in the market-share calculations.

In addition, two community credit unions exert a competitive influence in the Sunnyside 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.²² The Board finds that these circumstances warrant including the 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.

With the deposits of the thrift weighted at 100 percent and the two credit unions at 50 percent, the Sunnyside banking market appears to be only moderately concentrated, both before and after the transaction. Upon consummation of the merger, Banner would control approximately 25.2 percent of market deposits, the HHI would increase by 302 points to a level of 1743, a level which would be within the DOJ Bank Merger Guidelines, and 10 depository organizations would continue to operate in the Sunnyside banking market, including one insured depository institution with a market share of more than 25 percent.

¹⁹ The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase and the resulting level of concentration in a banking market. See *NationsBank Corp.*, 84 *Federal Reserve Bulletin* 129 (1998).

²⁰ The standard treatment of thrifts in the competitive analysis is to give their deposits 50-percent weighting to reflect their limited lending to small businesses relative to banks' lending levels. However, the Board previously has indicated that it may consider the competitiveness of a thrift institution at a level greater than 50 percent of its deposits when appropriate if competition from the institution closely approximates competition from a commercial bank. See, e.g., *Banknorth Group, Inc.*, 75 *Federal Reserve Bulletin* 703 (1989). Where, as here, the facts and circumstances of a banking market indicate that a particular thrift serves as a significant source of commercial loans and provides a broad range of consumer, mortgage, and other banking products, the Board has concluded that competition from such a thrift closely approximates competition from a commercial bank and that deposits controlled by the institution should be weighted at 100 percent in market-share calculations. See, e.g., *River Valley Bancorp*, FRB Order No. 2012-10 (October 17, 2012); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); and *Banknorth Group, Inc.*, *supra*.

²¹ This thrift institution has a ratio of commercial and industrial loans to assets of more than 5 percent, which is comparable to, or greater than, the ratio for some commercial banks in the market and greater than the ratio for some thrift institutions that the Board has previously found to be full competitors of commercial banks. *Id.*

²² 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 30, 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.*, 94 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, *supra*; *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

Walla Walla Banking Market. Using the initial competitive screening data, Banner is the second largest depository organization in the Walla Walla banking market, controlling approximately \$382.5 million in deposits, which represent 31.1 percent of market deposits. Starbuck is the third largest depository organization in the market, controlling approximately \$111.2 million in deposits, which represent 9.1 percent of market deposits. On consummation, the combined entity would be the largest depository organization in the Walla Walla banking market, controlling approximately \$493.7 million in deposits, which would represent approximately 40.2 percent of market deposits. The HHI in this market would increase by 563 points, from 2401 to 2964. To mitigate the potentially adverse competitive effects of the proposal in the Walla Walla banking market, Banner has committed to divest one branch, accounting for a total of approximately \$27.4 million in deposits, to a competitively suitable institution.²³

The Board has also 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. In the Walla Walla banking market, the competitive effects are mitigated by several factors. Two community credit unions exert a competitive influence in the 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. The Board finds that these circumstances warrant including the deposits of these credit unions at a 50-percent weight in estimating market influence.

After accounting for the branch divestiture and weighting the deposits of the two credit unions at 50 percent, Banner would control approximately 34.6 percent of market deposits and the HHI would increase by 327 points to a level of 2367. In addition, 10 other competitively active insured depository organizations would remain, eight of which have more than one branch in the Walla Walla market.

Moreover, recent entry and expansionary activity suggests that the market is attractive to potential competitors. Two depository organizations have entered the Walla Walla banking market de novo since 2012, one of which is in the process of opening a second branch in the market, and another existing competitor opened a new branch in 2010.

B. Views of Other Agencies and Conclusion on Competitive Consideration

The DOJ conducted a review of the potential competitive effects of the merger and has advised the Board that consummation would not likely have a significantly adverse effect on competition in any relevant banking market, including Sunnyside and Walla Walla. 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, including the proposed divestiture commitments, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the eight banking markets in

²³ As a condition of consummation of the proposed merger, Banner has committed that it would execute, before consummation of the proposed merger, a sales agreement with a competitively suitable banking organization. Banner also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, Banner has committed that, if the proposed divestiture is not completed within the 180-day period, Banner would transfer the unsold branch to an independent trustee, who would be instructed to sell the branch to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchaser must be deemed acceptable to the Board. *See, e.g., BankAmerica Corporation, 78 Federal Reserve Bulletin 338 (1992); and United New Mexico Financial Corporation, 77 Federal Reserve Bulletin 484 (1991).*

which Banner Bank and AmericanWest Bank compete directly, or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and future prospects of the institutions involved. In its evaluation of the financial factors, the Board reviews the financial condition of the organizations involved on both parent-only and consolidated bases, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the combined organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Banner and Banner Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction involves the acquisition and merger of a bank holding company and its subsidiary bank and is structured as a cash and share exchange.²⁴ The asset quality, earnings, and liquidity of Banner Bank and AmericanWest Bank are consistent with approval, and Banner appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects are considered consistent with approval. Based on its review of the record, the Board finds that Banner 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 Banner, Starbuck, and their insured depository institution subsidiaries, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable consumer protection, banking, and anti-money-laundering laws.

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

The Board also has considered Banner's plans for implementing the proposal. Banner has a demonstrated record of successfully integrating organizations into its operations and risk-management systems following acquisitions. Banner would implement its existing structure of centralized risk-management at the combined organization, which is considered acceptable from a supervisory perspective. In addition, Banner's and Starbuck's management has

²⁴ The aggregate consideration to be paid in connection with the proposal would be a fixed amount of cash and an aggregate number of shares of (i) Banner common stock and (ii) a new class of Banner non-voting common stock that would be authorized prior to the completion of the acquisition. Banner has sufficient resources to fund the proposed transaction.

the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Banner plans to integrate Starbuck's existing management and personnel in a manner that augments Banner's management.²⁵

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

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served. 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").²⁶ In addition, the Board considers the banks' overall compliance record, the results of recent fair lending examinations, and other supervisory assessments; the supervisory views of examiners; and other supervisory information. The Board also may consider the applicant organization's business model, marketing and outreach plans, plans following consummation, and any other information the Board deems relevant.

The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²⁷ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²⁸ In addition, fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics.

The Board has considered all the facts of record, including reports of examination of the CRA performance of Banner Bank and AmericanWest Bank, the fair lending and compliance records of both banks, the supervisory views of other agencies, confidential supervisory information, and information provided by Banner.

A. 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.²⁹ The CRA requires that the appropriate federal financial supervisor for a depository

²⁵ On consummation, Banner intends to retain certain members of management and most of the employees of Starbuck, including two current executive officers of Starbuck, who would serve in a consulting capacity at Banner, and the current chief financial officer of Starbuck, who would serve as the chief financial officer of Banner Bank for three years after the acquisition.

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

²⁷ 12 U.S.C. § 2901(b).

²⁸ 12 U.S.C. § 2903.

²⁹ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

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

In general, federal financial supervisors apply 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 data reported under the Home Mortgage Disclosure Act of 1975,³¹ in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on 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 of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;³² 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 Banner Bank. Banner Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, in March 2013 ("Banner Bank Evaluation"). Banner Bank received "High Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.³³

Examiners observed that Banner Bank's overall level of lending reflected good responsiveness to assessment area credit needs. Banner Bank's overall distribution of borrowers reflected good penetration among retail customers of different income levels and businesses and farms of different revenue sizes, and its overall geographic distribution of loans reflected adequate penetration throughout the assessment areas. Examiners noted that Banner Bank exhibited a good record of serving the credit needs of the most economically

³⁰ 12 U.S.C. § 2906.

³¹ 12 U.S.C. § 2801 *et seq.*

³² 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).

³³ The Banner Bank Evaluation was prepared using the interagency evaluation procedures for Large Institutions. The evaluation period for the Lending Test, Investment Test, and Service Test was from January 1, 2010, through December 31, 2012. The Banner Bank Evaluation included a full-scope review of the Seattle Metropolitan Division ("MD"), Washington, Boise Metropolitan Statistical Area ("MSA"), Idaho, and Lewiston-Clarkston Multi-State MSA, Portland-Vancouver-Beaverton Multi-State MSA, and Oregon non-MSA, all of Oregon, assessment areas and a limited-scope review of the Spokane MSA, Bellingham MSA, Tri-Cities MSA, Wenatchee Non-MSA, Yakima Non-MSA, and Washington Non-MSA, all of Washington, and Idaho Non-MSA, Idaho.

disadvantaged geographies of its assessment areas, low-income individuals, and very small businesses and small farms, consistent with safe and sound banking practices. Examiners also noted that Banner Bank had a relatively high level of community development lending, which was focused on affordable housing, and that it used flexible lending practices in serving assessment area credit needs.

Examiners found that Banner Bank had a significant level of qualified community development investments and grants, particularly those that are not routinely provided by private investors. Examiners noted that total investments doubled in amount since the previous evaluation. Examiners also noted that the bank exhibited good responsiveness to assessment area community development needs and used innovative and complex investments to support community development initiatives.

Examiners concluded that Banner Bank provided a relatively high level of community development services. Examiners noted that Banner Bank's delivery systems were accessible to all portions of its assessment areas and that its record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly with respect to low- and moderate-income geographies and individuals.

CRA Performance of AmericanWest Bank. AmericanWest Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, in September 2012 ("AmericanWest Bank Evaluation"). AmericanWest Bank received "High Satisfactory" ratings for the Lending Test and Investment Test and a "Low Satisfactory" rating for the Service Test.³⁴

Examiners observed that AmericanWest Bank's overall level of lending reflected good responsiveness to assessment area credit needs. AmericanWest Bank originated a substantial majority of loans in its assessment areas during the evaluation period. AmericanWest Bank's overall distribution of borrowers reflected good penetration among retail customers of different income levels and businesses and farms of different revenue sizes, and its overall geographic distribution of loans reflected good penetration throughout the assessment areas. Examiners noted that AmericanWest Bank exhibited a good record of serving the credit needs of the most economically disadvantaged geographies of its assessment areas, low-income individuals, and very small businesses and farms, consistent with safe and sound banking practices. Examiners also noted that AmericanWest Bank had an adequate level of community development lending.

Examiners found that AmericanWest Bank had made a significant level of qualified community development investments and grants. Examiners noted that AmericanWest Bank's volume of community development investments and donations showed a marked increase from the previous evaluation. Examiners also noted that the bank exhibited good responsiveness to assessment area community development needs.

Examiners concluded that AmericanWest Bank provided an adequate level of community development services. Examiners noted that AmericanWest Bank's delivery systems were

³⁴ The AmericanWest Bank Evaluation was prepared using the interagency evaluation procedures for Large Institutions. The evaluation period for the Lending Test was from January 1, 2009, through December 31, 2011, except for community development loans. The Service Test and the review of community development loans covered the period from January 1, 2009, through June 30, 2012. The evaluation period for the Investment Test was from December 22, 2008, through June 30, 2012. The AmericanWest Bank Evaluation included a full-scope review of the Washington Non-MSA, Washington, Idaho Non-MSA, Idaho, and Utah Non-MSA, Utah, assessment areas and a limited-scope review of the Spokane MSA, Yakima MSA, and Kennewick MSA, all of Washington, Coeur d'Alene MSA and Lewiston MSA, both of Idaho, and Salt Lake MSA, Provo MSA, and St. George MSA, all of Utah.

accessible to all portions of its assessment areas and that AmericanWest Bank's opening and closing of branches had not adversely affected the accessibility of its delivery systems.

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. Applicants state that current customers of Banner Bank and AmericanWest Bank would be able to take advantage of the combined organization's expanded branch network and broader range of financial products. In particular, AmericanWest Bank customers would benefit from access to a wider range of home mortgage products and Banner's small business loan platform. AmericanWest Bank customers would also be able to use Banner's online banking platform and mobile and text banking services. Applicants also state that large commercial customers would benefit from an expanded capital base and funding capabilities following the merger. Applicants represent that they do not expect the proposal to result in any significant reduction to the services or products offered or increases in fees charged to the communities currently served by Banner Bank and AmericanWest Bank.

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, the institutions' records of compliance with fair lending and other consumer protection laws, consultations with other agencies, information provided by Applicants, and confidential supervisory information. Based on that review, the Board concludes that the proposal would result in public benefits and 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."³⁵

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.³⁶ 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

³⁵ Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

³⁶ 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.³⁷

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, Banner would have approximately \$9.8 billion in consolidated assets and would not be likely to pose systemic risks. The Board generally presumes that a merger resulting in a firm with less than \$25 billion in total consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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

Conclusion

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

The proposal may not be consummated before the 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 San Francisco, acting under delegated authority.

By order of the Board of Governors, effective September 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

³⁷ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

Appendix

Banner Bank/AmericanWest Bank Banking Markets 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
Idaho-Washington Banking Market of Lewiston — Defined as the Lewiston metropolitan area in Nez Perce County, including Lewiston, both of Idaho, and Asotin County, including Asotin, Clarkston, Clarkston Heights-Vineland, and West Clarkson-Highland, all of Washington						
Banner Bank Pre-Consummation	2	141.2 mil.	17.2			
AmericanWest Bank	10	12.4 mil.	1.5			
Banner Bank Post-Consummation	2	153.6 mil.	18.7	1603	52	10
Oregon Banking Market of Roseburg — Defined as Central Douglas County, including Canyonville, Dillard, Fair Oaks, Glide, Green, Myrtle Creek, Oakland, Riddle, Roseburg, Roseburg North, Sutherlin, Tri-City, and Winston, all of Oregon						
Banner Bank Pre-Consummation	7	22.5 mil.	1.5			
AmericanWest Bank	3	133.3 mil.	8.6			
Banner Bank Post-Consummation	2	155.8 mil.	10	4557	25	6
Washington-Idaho Banking Market of Spokane — Defined as the Spokane metropolitan area in Spokane County, including Airway Heights, Cheney, Dishman, Fairchild Air Force Base, Liberty Lake, Mead, Medical Lake, Opportunity, Spokane, Spokane Valley, and Veradale, all of Washington, and the central western portion of Kootenai County, including Coeur D'Alene, Hayden, Hayden Lake, Post Falls, and Rathdrum, all of Idaho						
Banner Bank Pre-Consummation	7	442.2 mil.	5.2			
AmericanWest Bank	10	140.5 mil.	1.6	1246	16	20
Washington Banking Market of Richland-Kennewick-Pasco — Defined as the Tri-Cities area in south central Washington in Benton, Franklin, and Walla Walla counties, including Benton City, Burbank, Connell, Finley, Kennewick, Mesa, Pasco, Richland, Wallula, West Pasco, and West Richland, all of Washington						
Banner Bank Pre-Consummation	5	175.1 mil.	7.8			
AmericanWest Bank	10	104.4 mil.	4.7			
Banner Bank Post-Consummation	3	279.5 mil.	12.5	1034	74	14
Washington Banking Market of Seattle — Seattle metropolitan area in King, Pierce, and Snohomish counties, the southeastern portion of Island County, and Bainbridge Island in Kitsap County, including Alder, Alderton, Alderwood Manor, Algona, Ames Lake, Arlington, Arlington Heights, Artondale, Ashford, Auburn, Bainbridge Island, Baring, Bellevue, Black Diamond, Bonney Lake, Bothell, Bothell East, Bothell West, Boulevard Park, Brier, Browns Point, Bryant, Bryn Mawr-Skyway, Buckley, Bunk Foss, Burien, Camano Island, Canterwood, Canyon Creek, Carbonado, Carnation, Cavalero, Chain Lake, Clear Lake, Clinton, Clover Creek, Clyde Hill, Cottage Lake, Covington, Darrington, Dash Point, Des Moines, Dupont, Duvall, Eastgate, East Hill-Meridian, Eastmont, East Renton Highlands, Eatonville, Edgewood, Edmonds, Elbe, Elk Plain, Enumclaw, Esperence, Everett, Fairwood, Fall City, Federal Way, Fife, Fircrest, Fobes Hill, Fort Lewis, Fox Island, Frederickson, Freeland, Gig Harbor, Gold Bar, Graham, Granite Falls, Hobart, Hunts Point, Index, Inglewood-Finn Hill, Issaquah, Kapowsin, Kenmore, Kent, Kingsgate, Kirkland, Klahanie, La Grande, Lake Bosworth, Lake Cassidy, Lake Forest Park, Lake Holm, Lake Ketchum, Lakekeland North, Lakeland South, Lake Marcel-Stillwater, Lake Morton-Berrydale, Lake Roesiger, Lake Stevens, Lake Stickney, Lake Tapps, Lakewood, Langley, Larch Way, Lochsloy, Lynnwood, Machias, Maple Heights-Lake Desire, Maple Valley, Maplewood, Martha Lake, Marysville, May Creek, McChord Air Force Base, McMillan, Meadowdale, Medina, Mercer Island, Midland, Midway, Mill Creek, Mill Creek East, Milton, Mirrormont, Monroe, Monroe North, Mountlake Terrace, Mukitseo, Newcastle, Newport Hills, Normandy Park, North Bend, North Fort Lewis, North Lynnwood, North Marysville, North Puyallup, North Sultan, Northwest Stanwood, Orting, Oso, Pacific, Parkland, Picnic Point, Prairie Heights, Prairie Ridge, Purdy, Puyallup, Raft Island, Ravensdale, Redmond, Renton, Riverbend, Riverton, Rosedale, Ruston, Sammamish, Seatac, Seattle, Shadow Lake, Shoreline, Silvana, Silver Firs, Sisco Heights, Snohomish, Snoqualmie, South Hill, South Prairie, Spanaway, Stanwood, Startup, Steilacoom Summit, Sultan, Summit View, Sumner, Sunday Lake, Swede Heaven, Tacoma, Tanner, Three Lakes, Tukwila, Tulalip, Union Hill-Novelty Hill, University Place, Vashon, Vashon Island, Verlot, Waller, Warm Beach, Wauna, White Center, Wilderness Rim, Wilkeson, Wollochet, Woodinville, Woods Creek, Woodway, and Yarrow Point, all of Washington						
Banner Bank Pre-Consummation	14	846.8 mil.	1.0			
AmericanWest Bank	23	281.6 mil.	0.4			
Banner Bank Post-Consummation	11	1.1 bil.	1.4	1274	1	53
Washington Banking Market of Yakima — Defined as the Yakima metropolitan area in Yakima County, including Ahtanum, Cowiche, Eschbach, Glead, Naches, Selah, Summitview, Terrace Heights, Tieton, Union Gap, and Yakima, all of Washington						
Banner Bank Pre-Consummation	3	269.7 mil.	13.7			
AmericanWest Bank	10	50.2 mil.	2.6			
Banner Bank Post-Consummation	2	319.9 mil.	16.3	1352	70	14

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

First Horizon National Corporation Memphis, Tennessee

Order Approving the Formation of a Bank Holding Company and the Acquisition of a Bank Holding Company
FRB Order No. 2015-24 (September 17, 2015)

First Horizon National Corporation (“First Horizon”) and its subsidiary holding company, First Horizon Merger Sub, LLC, both of Memphis, Tennessee (collectively, “Appli-

cants”), have requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to acquire TrustAtlantic Financial Corporation (“TrustAtlantic”) and thereby indirectly acquire its subsidiary bank, TrustAtlantic Bank, both of Raleigh, North Carolina. Following the proposed acquisition, TrustAtlantic Bank would be merged into First Horizon’s subsidiary bank, First Tennessee Bank, N.A. (“First Tennessee Bank”), Memphis, Tennessee.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 891 (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.

First Horizon, with consolidated assets of approximately \$25.7 billion, is the 61st largest insured depository organization in the United States, controlling approximately \$18.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁴ First Horizon controls First Tennessee Bank, which operates in Tennessee, Georgia, Mississippi, North Carolina, and South Carolina. First Horizon is the 59th largest insured depository organization in North Carolina, controlling approximately \$179.2 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁵

TrustAtlantic, with consolidated assets of approximately \$469.2 million, is the 1,444th largest insured depository organization in the United States, controlling approximately \$388.6 million in deposits, which represent less than 1 percent of nationwide deposits. TrustAtlantic controls TrustAtlantic Bank, which operates only in North Carolina. TrustAtlantic is the 41st largest insured depository organization in North Carolina, controlling \$392.4 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, First Horizon would remain the 61st largest depository organization in the United States, with consolidated assets of approximately \$26.2 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. First Horizon would control total deposits of approximately \$19.0 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In North Carolina, First Horizon would become the 33rd largest depository organization, controlling deposits of approximately \$571.6 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank in a state other than the home state of the bank holding company without regard to

¹ 12 U.S.C. § 1842.

² The merger of TrustAtlantic Bank into First Tennessee Bank is subject to the approval of the Office of the Comptroller of the Currency (“OCC”) pursuant to section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”). 12 U.S.C. § 1828(c). The OCC approved the bank merger on September 16, 2015.

³ 12 CFR 262.3(b).

⁴ Asset and nationwide deposit-ranking data are as of March 31, 2015, unless otherwise noted.

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

whether the transaction is prohibited under state law.⁶ 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.⁷ 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.⁸

For purposes of the BHC Act, First Horizon's home state is Tennessee, and TrustAtlantic's home state is North Carolina.⁹ First Horizon is well capitalized and well managed under applicable law and has a satisfactory Community Reinvestment Act rating.¹⁰ North Carolina has no minimum age requirement,¹¹ and TrustAtlantic Bank has been in existence for more than five years.

On consummation of the proposed transaction, First Horizon would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, the combined organization would control less than 1 percent of the total amount of deposits of insured depository institutions in TrustAtlantic's home state of North Carolina, the only state in which First Horizon and TrustAtlantic have overlapping banking operations.¹² Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

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

First Horizon and TrustAtlantic have subsidiary depository institutions that compete directly in only the Raleigh, North Carolina, banking market (the "Raleigh banking mar-

⁶ 12 U.S.C. § 1842(d)(1)(A).

⁷ 12 U.S.C. § 1842(d)(1)(B).

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

⁹ *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.

¹⁰ 12 U.S.C. §§ 2901–2908. There are no state community reinvestment laws applicable to this case.

¹¹ *See* N.C. Gen. Stat. § 53-224.19 (permitting interstate merger acquisitions but not imposing an age requirement).

¹² North Carolina does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

¹³ 12 U.S.C. § 1842(c)(1).

ket”).¹⁴ The Board has considered the competitive effects of the proposal in this 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 First Horizon would control;¹⁵ the concentration level of market deposits and the increase in that level, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹⁶ and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Raleigh banking market. On consummation of the proposal, the Raleigh banking market would remain moderately concentrated, as measured by the HHI. The HHI change would be minimal, and numerous competitors would remain in the market.¹⁷

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

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Raleigh 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 information on the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information on the financial condition of the subsidiary depository institutions and the organizations’ signifi-

¹⁴ The Raleigh banking market is defined as the Raleigh Rand McNally Marketing Area (“RMA”) and the non-RMA portions of Franklin, Harnett, Johnston, and Wake Counties, all in North Carolina.

¹⁵ 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).*

¹⁶ 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/department-justice-and-federal-trade-commission-issue-revised-horizontal-merger-guidelines.

¹⁷ First Horizon operates the 18th largest depository institution in the Raleigh banking market, controlling approximately \$122.8 million in deposits, which represent less than 1 percent of market deposits. TrustAtlantic operates the 13th largest depository organization in the same market, controlling deposits of approximately \$344.1 million, which represent 1.4 percent of market deposits. On consummation of the proposed transaction, First Horizon would become the 12th largest depository institution in the market, controlling deposits of approximately \$466.9 million, which represent 1.9 percent of market deposits. The HHI for the Raleigh banking market would increase by one point to 1439, and 31 other competitors would remain in the market.

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

First Horizon and First Tennessee Bank are both well capitalized and would remain so on consummation of the proposal. The proposed transaction involves the acquisition and merger of a bank holding company, and it is structured as a cash and share exchange, with a subsequent merger of the subsidiary depository institutions.¹⁸ The asset quality, earnings, and liquidity of First Tennessee Bank and TrustAtlantic Bank are consistent with approval, and First Horizon 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 First Horizon 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 First Horizon, TrustAtlantic, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by First Horizon, the Board's supervisory experiences with First Horizon and TrustAtlantic and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

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

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

The Board considered a comment on the application criticizing the departure of four commercial lenders from TrustAtlantic shortly after the proposed acquisition by First Horizon was made public. The commenter expressed concern that the departure of four commercial lenders from TrustAtlantic would have a negative impact on First Horizon's future pros-

¹⁸ As part of the proposed transaction, each share of TrustAtlantic common stock would be converted into a right to receive cash and First Horizon common stock based on a fixed exchange ratio. First Horizon has the financial resources to fund the acquisition.

pects. First Horizon stated that it was informed of the departures and analyzed the impact of such departures on TrustAtlantic's operations. First Horizon also noted that TrustAtlantic has taken steps to hire new commercial lenders and that First Tennessee and TrustAtlantic together have developed a plan to address the employee departures.

Based on all the facts of record, including First Horizon'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 First Horizon and TrustAtlantic in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served. 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").¹⁹ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²⁰ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods.²¹

In addition, the Board considers the banks' overall compliance record and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics.

The Board also considers the supervisory assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans following consummation, and any other information the Board deems relevant.²²

A. Public Comments Regarding the Proposal

In this case, the Board received three comments on the proposal from two commenters criticizing the fair lending and CRA performance records of First Tennessee Bank and TrustAtlantic Bank. The OCC received and considered the same comments in connection with its review of the underlying bank merger application.

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

²⁰ 12 U.S.C. § 2901(b).

²¹ 12 U.S.C. § 2903.

²² The Board has considered that First Horizon will pay \$212.5 million related to settling claims brought by the DOJ that certain mortgage loans originated by a mortgage subsidiary between 2006 and 2008 that were insured by the Federal Housing Administration did not meet the agency's certification standards. The mortgage subsidiary has been sold by First Horizon.

A commenter objects to the proposal on the basis of First Tennessee Bank's CRA lending record to LMI borrowers throughout its assessment areas, as reflected in the bank's most recent CRA performance evaluation by the OCC, as of January 11, 2010 ("First Tennessee Bank Evaluation"), and, in particular, in the Memphis, Tennessee-Mississippi-Arkansas Multistate Metropolitan Statistical Area ("Memphis MSA"), the Chattanooga, Tennessee-Georgia Multistate Metropolitan Statistical Area ("Chattanooga MSA"), and the Nashville Metropolitan Statistical Area ("Nashville MSA"). This commenter also expresses concerns with First Tennessee Bank's small business lending in the Chattanooga MSA. The commenter also objects to the proposal on the basis of TrustAtlantic Bank's lending record to LMI borrowers in the Wake County assessment area ("Wake County AA") and the Pitt County assessment area ("Pitt County AA"), as reflected in TrustAtlantic Bank's most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC"), as of August 22, 2013 ("TrustAtlantic Bank Evaluation"). In addition, the commenter notes that First Tennessee Bank received an overall "Low Satisfactory" rating on the Investment Test in the First Tennessee Bank Evaluation.

A commenter also objects to the proposal on the basis of First Tennessee Bank's lending record to minority borrowers in the Memphis MSA and the Raleigh, North Carolina, Metropolitan Statistical Area ("Raleigh MSA"), as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")²³ for 2013. Another commenter expresses concerns with First Tennessee Bank's record in lending to minority communities in the Chattanooga MSA, the Knoxville Metropolitan Statistical Area ("Knoxville MSA"), the Memphis MSA, and the Nashville MSA, as reflected in HMDA data. This commenter also expresses concern with First Tennessee Bank's lack of collection of HMDA-mandated information regarding the race of potential borrowers in the Chattanooga, Knoxville, Memphis, and Nashville MSAs.

First Tennessee Bank's Business and Response to Comments. First Tennessee Bank's business model has significantly changed since 2008. Prior to 2008, First Tennessee Bank operated as a multistate bank with national lending operations outside of its current retail banking footprint in Georgia, Mississippi, North Carolina, and Tennessee. The bank's national lending operations included financial centers in Texas and Virginia, and an expanded presence in Georgia, as well as an extensive network of mortgage production offices doing business under the name First Horizon Home Loans.

In 2008, First Tennessee Bank divested a majority of its bank branches and exited the national lending business through the sale to an unaffiliated third party of the First Horizon Home Loans business, including approximately 250 mortgage production offices and its loan origination and servicing platforms. These platforms previously had allowed First Tennessee Bank to originate government-guaranteed and conventional home purchase loans that require escrow capabilities. Concurrent with the sale of First Horizon Home Loans, First Tennessee Bank entered into an agreement with a third party, PHH Mortgage Corporation, to permit the bank to provide government-guaranteed home purchase mortgage loans with escrow capabilities in its local communities. Those loans were reflected in First Tennessee Bank's HMDA report as home mortgage loans originated by First Tennessee Bank. The agreement with PHH Mortgage Corporation expired in 2012 and was not renewed. Subsequently, First Tennessee Bank entered into broker relationships with Quicken Loans, under which the bank's loan specialists assist mortgage applicants who wish to obtain a government-guaranteed loans in completing applications for government-guaranteed and conventional home purchase loans that require escrow capabilities and refer those applications to Quicken Loans for review and processing. First Tennessee Bank

²³ 12 U.S.C. § 2801 *et seq.*

does not receive credit under the CRA for any loans originated by Quicken Loans pursuant to the broker relationship. First Tennessee Bank represents that, pursuant to this broker relationship, it provided 7,922 referrals to Quicken Loans from 2012 to 2014, which are not reflected in its HMDA data. First Tennessee Bank represents that it is negotiating correspondent relationships with Quicken Loans and two other third-party lenders to be able to close loans for which it would receive CRA credit. First Tennessee Bank anticipates completing those contract negotiations by the end of November.

First Tennessee Bank currently offers home mortgage loans, as well as refinance and home improvement loans; government-guaranteed loans, however, are only offered through the broker relationship with Quicken Loans. First Tennessee Bank does not accept home loan applications in person at its branch locations; rather, such applications are taken remotely at a centralized lending unit that accepts applications by phone.

First Horizon argues that First Tennessee Bank's performance in home purchase lending to LMI areas in the Memphis MSA, the Chattanooga MSA, and the Nashville MSA was impacted by changes to the bank's business operations, in particular the expiration of its contract with PHH Mortgage Corporation in 2012. Upon the termination of that contract, First Tennessee Bank was no longer able to provide government-guaranteed home purchase mortgage loans in its local communities. First Horizon emphasizes that examiners found the bank's overall home loan originations to be satisfactory in the First Tennessee Bank Evaluation, notwithstanding the change in First Tennessee Bank's business operations and that the number of home purchase loans originated by First Tennessee Bank was low.

First Horizon asserts that the percentages of home loans in First Tennessee Bank's assessment areas, as reflected in the First Tennessee Bank Evaluation, were lower due to the significant changes to the bank's business model that occurred in 2008, as described above. In addition, First Horizon emphasizes that the bank's overall level of home loan originations was found to be satisfactory by examiners in the First Tennessee Bank Evaluation. First Horizon represents that its aggregate lending figures within its assessment areas changed significantly subsequent to the period reviewed in the First Tennessee Bank Evaluation, as the bank had significantly changed its business model at that time. Specifically, First Horizon notes that during the period from 2010 through 2014, most of First Tennessee Bank's home loans were originated within the bank's assessment areas, including 90 percent of the loans originated in its assessment areas in 2014.

In response to a commenter's observation that examiners found the bank's percentage of loans to businesses with revenues of \$1 million or less was lower than the percentage of small businesses within the Chattanooga MSA in the First Tennessee Bank Evaluation, First Horizon argues that the percentage of First Tennessee Bank's small business loans in both low-income and moderate-income geographies significantly exceeded the percentages of businesses located in those segments in the assessment area, and that First Tennessee Bank's market share of small loans to businesses in such communities significantly exceeded its overall market share. First Horizon further asserts that First Tennessee Bank has a number of products designed for small business borrowers, including secured term loans, small business credit cards, secured and unsecured lines of credit, and small business credit products through the Small Business Administration's 504, 7(a), and CAPLines programs that benefit small for-profit and not-for-profit businesses. First Horizon asserts that, to supplement its efforts to serve the needs of small business borrowers, the bank has a marketing alliance with a third-party lender that helps higher-risk small business borrowers obtain credit products. Finally, First Horizon emphasizes that examiners' overall assessment of First Tennessee Bank's record of small business lending was "Satisfactory."

First Horizon argues that TrustAtlantic Bank's distribution of home mortgage loans among various census tracts in the Wake County AA in 2011 and 2012 reflected an overall excellent penetration rate in low- and moderate-income areas. First Horizon further asserts that TrustAtlantic Bank's distribution of home mortgage loans in moderate-income census tracts in the Pitt County AA reflected excellent penetration in 2011 and 2012. Although TrustAtlantic Bank did not originate any home mortgage loans in the low-income census tracts of the Pitt County AA in 2011 and 2012, First Horizon contends that only 0.6 percent of owner-occupied housing in the Pitt County AA is located in the low-income tracts and that aggregate lending constituted only 0.5 percent in those census tracts.

First Horizon asserts, in response to the comment on First Tennessee's performance on the Investment Test in the First Tennessee Bank Evaluation, that its private charitable foundation, established in 1993, has donated substantial amounts to meet community needs, including grants during 2014 to local organizations in the Mid-Atlantic region involved in affordable housing, healthcare, and financial literacy. First Horizon further asserts that it has enhanced its investment activities and those of First Tennessee Bank since the First Tennessee Bank Evaluation, including by providing financing to a Treasury-certified Community Development Financial Institution that provides affordable financing and related development services, investing in the Federal Home Loan Bank of Tennessee (which oversees a grant program for nonprofit agencies to develop affordable housing) and establishing the First Tennessee Housing Corporation to develop affordable multifamily housing. First Horizon also states that First Tennessee Bank made contributions during 2014 to community organizations that have a direct impact on meeting the lending needs of LMI persons in the Raleigh and Winston-Salem communities in North Carolina.

First Horizon asserts that the bank's ability to collect information on the ethnicity, race, and sex of applicants, a focus of a comment, is impacted by its current lending strategy, in which it takes loan applications only through a process using a centralized call center. First Horizon asserts that, although the bank follows specific processes through its loan origination process to request the required information on the ethnicity, race, and sex of applicants in its loan application process, it cannot require an applicant to provide the information.

First Horizon states that its analysis of applications by census tracts indicates a close correlation between its lending activities and the ownership opportunities based on owner-occupied housing units and rental housing in such census tracts, and that the HMDA data ratios cited by the commenters do not accurately reflect First Tennessee Bank's compliance with fair lending laws. In this respect, First Horizon notes that the lack of information on the ethnicity, race, and sex of applicants resulting from its home mortgage application processes makes comparisons between racial or ethnic groups unreliable. First Horizon also notes that its business model, in which it does not currently offer government-guaranteed home purchase loans, results in significantly fewer home purchase loans as compared to competitors and in significantly fewer home purchase loans by first-time home buyers, both of which factors contribute to the disparities noted by commenters. In addition, First Horizon contends that it has a comprehensive fair lending compliance program to ensure compliance with fair lending laws.

B. Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views

provided by the appropriate federal supervisors.²⁴ In this case, the Board considered the supervisory views of and information provided by the OCC, the FDIC, and the Consumer Financial Protection Bureau (“CFPB”).

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.²⁵ An institution’s most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution’s primary federal supervisor of the institution’s overall record of lending in its communities.

In general, federal financial supervisors apply 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 of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;²⁶ 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.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution’s credit decisions is not available from HMDA data.²⁷ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of First Tennessee Bank. First Tennessee Bank was assigned an overall “Satisfactory” rating in the First Tennessee Bank Evaluation. First Tennessee Bank received a “High Satisfactory” rating for both the Lending Test and the Service Test, and a

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

²⁵ 12 U.S.C. § 2906.

²⁶ 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).

²⁷ 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 (the reasons most frequently cited for a credit denial or higher credit cost).

“Low Satisfactory” rating for the Investment Test. The Board has consulted with the OCC regarding the First Tennessee Bank Evaluation.

Examiners found First Tennessee Bank’s community development lending to be a good and positive factor in those assessment areas in which the bank maintained an ongoing presence. Examiners also noted that First Tennessee Bank had an adequate level of qualified investments based on the investment opportunities and dollar volume of investments made in the assessment areas and provided a good level of community development services in those assessment areas in which First Tennessee Bank maintained an ongoing presence.²⁸

Examiners found that the bank’s overall lending activity reflected good responsiveness to the bank’s deposit market share and assessment area credit needs, with a good distribution of home mortgage loans by income level or geography, as well as a good distribution of loans to borrowers of different income levels and businesses of different sizes.²⁹ Examiners found that, although the bank could improve the distribution of home purchase loans in LMI areas, its overall geographic distribution of loans in the bank’s assessment areas was good when the geographic distribution of loans to small businesses, home improvement loans, and home refinance loans were included. Examiners found that First Tennessee Bank’s geographic distribution of small business loans in LMI areas was excellent, but that the bank could improve its borrower distribution of such loans in the Chattanooga MSA. Examiners noted that the bank originated a majority of its loans within its designated assessment areas during the review period.

Examiners noted that, in assessment areas in which First Tennessee Bank maintained an ongoing presence, its level of community development loans was good and a positive factor that reflected responsiveness to varying needs in the assessment areas. For example, examiners noted that the bank’s record of originating community development loans in both the Chattanooga MSA and the Memphis MSA during the evaluation period was good and had a positive impact on the bank’s lending test and that the record reflected a variety of community development purposes, including affordable housing, community services targeted to LMI individuals, economic development, and revitalization and stabilization of LMI areas of the bank’s assessment areas.

First Tennessee Bank’s community development lending activities included providing financing to support construction of student housing at a historically black college and university, financing for a baseball stadium in a formerly blighted community, making a loan to construct a workforce training center for people with special needs, and helping several small communities recover from disasters by extending loans for infrastructure and essential equipment. In addition, First Tennessee Bank worked with local organizations to meet unique lending needs, for example, by partnering with the Business Expansion Funding Corporation, a community development corporation in North Carolina, to extend a loan under the Small Business Administration’s Section 504 loan program to a small busi-

²⁸ The First Tennessee Bank Evaluation was conducted using the Large Institution CRA Examination Procedures. Examiners reviewed HMDA-related mortgage loan data and CRA-reportable small business lending activity reported by First Tennessee Bank from January 1, 2004, to December 31, 2009, and reviewed community development loans, investments, services, and retail services from January 1, 2005, to December 31, 2009. The OCC reviewed a majority of the bank’s assessment areas using an evaluation period of approximately 12 to 24 months. This shorter evaluation period was used because First Tennessee Bank ceased its presence in many assessment areas prior to the end of 2009.

²⁹ Examiners placed greater weight on the bank’s performance in three assessment areas (the Memphis MSA, the Chattanooga MSA, and the state of Tennessee), as these areas represented the bank’s most significant markets in terms of deposit concentrations, lending, investments, and service activity.

ness in Wake County, North Carolina, that was anticipated to create many new jobs in the local community.

Examiners found that First Tennessee Bank had an adequate level of qualified community development investments based on the investment opportunities and dollar volume of investments made in First Tennessee Bank's assessment areas. During the evaluation period, First Tennessee Bank's total investments consisted primarily of Low Income Housing Tax Credit investments, and examiners found that these investments were very responsive to affordable housing needs and required considerable management time and expertise to monitor the bank's investment portfolio. Examiners noted that First Tennessee Bank had an adequate volume of community development investments in the Memphis MSA that addressed the need for affordable housing and community services for LMI individuals.

Examiners observed that First Tennessee Bank's branch locations were accessible in the assessment areas in which the bank maintained an ongoing presence. Examiners noted that the bank provided a good level of community development services in the Memphis MSA and Chattanooga MSA, with a good distribution of bank branches in both low- and moderate-income geographies. Examiners also noted that First Tennessee Bank had a good level of community development services in the Memphis MSA and a high level of community development services in the Chattanooga MSA.

First Tennessee Bank's Efforts Since the First Tennessee Bank Evaluation. First Horizon asserts that, since the First Tennessee Bank Evaluation, First Tennessee Bank has been an active partner in numerous community development initiatives to meet the needs of its local communities in the areas of lending, investments, and services. First Tennessee Bank has made community development loans that support affordable housing, economic development, stabilization and revitalization, and community services. Such lending activities included making community development loans for the purpose of providing childcare, education, and access to health and other social services for LMI individuals and minority individuals in the communities it serves, as well as financing small businesses to promote growth and economic development in a number of the LMI communities it serves. First Horizon asserts that it established a target of originating up to 30 percent of its mortgage loans to LMI borrowers or in LMI geographies, with a heightened focus on the Chattanooga, Memphis, Raleigh, and Wake County assessment areas. In furtherance of this goal, First Horizon notes that it has been engaged in discussions with third-party mortgage lenders to establish relationships that would permit First Tennessee Bank to originate government-guaranteed mortgage loans and conventional home mortgage purchase loans that require escrow capabilities. First Tennessee Bank also has partnered with Operation Hope to provide credit counseling, budgeting, and other financial empowerment training to individuals who earn less than \$50,000 per year and has committed to establishing at least ten locations in which such services will be provided over the next two years. First Horizon further contends that it periodically reviews its branch strategy to ensure that First Tennessee Bank's branch delivery system serves its customers throughout its local communities, including LMI areas. As described above, First Tennessee Bank also has continued developing its small business product offerings under the Small Business Administration's 504, 7(a), and CAPLines programs, and the bank has stated that it will recruit a targeted Small Business Administration business development officer by the end of 2015 to market its Small Business Administration programs. The Bank also has committed to originating 30 percent of its loans to small businesses in LMI geographies throughout all of its current assessment areas.

First Horizon asserts that First Tennessee Bank has made community development investments for the purpose of providing safe and affordable housing, childcare, education, and

access to health and other social services for LMI individuals and minority individuals in the communities it serves. First Horizon also maintains that First Tennessee Bank contributed to projects to revitalize and stabilize distressed communities across its assessment areas. First Horizon notes that its total qualified investments declined in 2013 and 2014 due to the reduction in the availability of Low Income Housing Tax Credit investments in those years as a result of the condition of the housing market. In addition, First Horizon represents that First Tennessee Bank has committed to invest at least one percent of its Tier 1 capital on an annual basis to community development activities.

First Horizon represents that First Tennessee Bank's community development service activities have included acting as the financial sponsor for a number of activities to promote financial literacy. In addition, First Horizon asserts that First Tennessee Bank employees have provided thousands of hours of volunteer services to support consumers and civic organizations.

CRA Performance of TrustAtlantic Bank. The TrustAtlantic Bank Evaluation was conducted by the FDIC using the Intermediate Small Bank CRA Examination Procedures.³⁰ TrustAtlantic Bank was assigned a "Satisfactory" rating in the TrustAtlantic Bank Evaluation, with ratings of "Satisfactory" for the Lending Test and "Outstanding" for the Community Development Test.³¹ Examiners noted that TrustAtlantic Bank provided for the credit needs and economic development of the assessment areas in a manner consistent with its size, financial capacity, location, and local economic conditions.³² The Board has consulted with the FDIC, the primary supervisor of TrustAtlantic Bank, regarding the TrustAtlantic Bank Evaluation.

Examiners noted that the bank originated a majority of its loans within its assessment area, demonstrating reasonable performance. Examiners found that the bank's geographic distribution of home mortgage loans reflected an excellent penetration rate in LMI areas in both the Wake County AA and Pitt County AA and that small business loans reflected a marginally reasonable dispersion throughout the Wake County AA and an excellent dispersion throughout the Pitt County AA. Examiners also found that the bank's distribution of loans to borrowers reflected an overall reasonable distribution among individuals of different income levels and businesses of different sizes. Nevertheless, examiners concluded that the bank had room to improve its performance in home mortgage lending to LMI borrowers in the Wake County AA and Pitt County AA.

Examiners noted that TrustAtlantic Bank's community development performance demonstrated excellent responsiveness to the community's development needs in its assessment areas. Examiners also found that TrustAtlantic Bank provided an adequate level of community development services through its employee involvement in community development organizations.

³⁰ The lending test applicable to intermediate small banks specifically evaluates the institution's loan-to-deposit ratio and other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments; the percentage of loans and other lending-related activities located in the bank's assessment areas; the bank's record of lending to and engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes; the geographic distribution of the bank's loans; and the bank's record of taking action in response to written complaints about its performance in helping to meet credit needs in its assessment areas. *See, e.g.*, 12 CFR 228.26(b).

³¹ Examiners reviewed the bank's commercial and residential lending activity from June 30, 2012, to June 30, 2013. These products were selected for analysis because they represented 52 percent and 29 percent, respectively, of the bank's loan portfolio.

³² The TrustAtlantic Bank Evaluation reviewed the bank's two assessment areas, including include Wake County, which is part of the three-county Raleigh-Cary Metropolitan Statistical Area, and Pitt County, which encompasses the entire Greenville Metropolitan Statistical Area, both in North Carolina.

Views of Other Regulators and OCC Approval of the Bank Merger. The Board has consulted with the OCC, the primary supervisor of First Tennessee Bank, in connection with the OCC's review of the proposed merger of First Tennessee Bank and TrustAtlantic Bank, which is a substantive part of the proposal before the Board. The OCC received comments substantially identical to the comments submitted to the Board and conducted a review of these comments as they pertain to the two banks, taking into consideration the HMDA data cited by the commenters; First Tennessee Bank's CRA, consumer compliance, and fair lending records; the bank's marketing outreach to African Americans and Hispanics and in LMI communities; and other community outreach efforts. The OCC found that although First Tennessee Bank's performance under the CRA was satisfactory, the First Tennessee Bank Evaluation and public comment on the proposal identified areas for improvement for the bank in North Carolina, specifically with respect to First Tennessee Bank's provision of products and services to LMI individuals and in LMI geographies, to minority individuals within its assessment areas, and in First Tennessee Bank's Investment Test performance.

After a full review of the proposal, including consideration of the public comments, the OCC determined that the proposal met the standards of the Bank Merger Act and approved the proposal applying the same standards as must be reviewed by the Board under the BHC Act. As a condition to approving the Bank Merger Act application, the OCC required First Tennessee Bank to develop a CRA Plan within 90 days of the OCC's action on the bank merger that contains measureable annual goals and timetables to achieve the discrete goals discussed in the CRA Plan. This plan is designed to ensure that First Tennessee Bank addresses weaknesses in its performance and implements a program suitable to the increased size and complexity that results from consummation of this proposal.

C. Public Benefits of the Proposal

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. One commenter expressed concern that First Horizon has not demonstrated how the proposal would result in clear public benefits.

First Horizon represented that the proposal would improve convenience for customers by providing them with a broader range of financial products and services through an expanded branch network. First Horizon represented that customers of TrustAtlantic Bank would have access to additional deposit products, including wholesale and retail lock-box and a more advanced remote deposit capture product; disbursement products with fraud protection; purchase and payroll cards; electronic bill pay; more sophisticated wire transfer and ACH systems; mobile banking; credit cards and debit cards that can be reissued within branch offices; financial planning for individuals and families; investment management; a full service trust department; and a larger legal lending limit. According to First Horizon, TrustAtlantic Bank's customers also would benefit from First Tennessee Bank's broader expertise in specialized segments including larger commercial segments not currently served by TrustAtlantic Bank and industry segments such as healthcare, transportation, consumer finance, and asset-based lending; government and municipal finance; interest rate protection products; and ancillary services that include a full-service international department.

D. 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, the FDIC, and the CFPB; confidential supervisory information; information provided by First Horizon; and the public comments on the proposal. Based on that review, the Board concludes that the proposal would result in public benefits and that the convenience and needs factor is consistent with approval.

The Board expects First Horizon to continue making progress to address weaknesses in the CRA performance of its banks and to implement a program for lending, investments, and services that is commensurate with the size, complexity, and expanding geography of the combined organization. This includes executing CRA plans that address any weaknesses in the performance of the banks before First Horizon seeks to engage in further expansionary activity. The Board will monitor progress by First Horizon as part of the supervisory process.

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.”³³

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

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, First Horizon would have approximately \$26.1 billion in consolidated assets and, by any of a number of alternative measures of firm size, First Horizon 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 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.

³³ 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).

³⁴ Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

³⁵ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

In light of all the facts and circumstances, this transaction would not 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.³⁶ 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 Board's approval is specifically conditioned on compliance by Applicants with all the conditions imposed in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective September 17, 2015.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Empresas Juan Yarur SpA
Santiago, Chile

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2015-25 (September 21, 2015)

Empresas Juan Yarur SpA (“EJY”) and its subsidiary, Banco de Credito e Inversiones S.A. (“BCI” and, collectively with EJY, “Applicants”), both of Santiago, Chile, foreign banking organizations subject to the provisions of the Bank Holding Company Act (“BHC Act”),¹ have requested the Board's approval under section 3(a)(1) of the BHC Act to acquire CM

³⁶ The commenters requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 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 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 written comments that the Board has considered in acting on the proposal. The commenters' requests do not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the requests do not demonstrate why the written comments do not present the commenters' views adequately or why a hearing would otherwise 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.

¹ 12 U.S.C. § 1842.

Florida Holdings, Inc. (“CM Florida”), Coral Gables, Florida, and thereby indirectly to acquire its subsidiary bank, City National Bank of Florida (“City National”), Miami, Florida.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (78 *Federal Register* 42074 (July 15, 2013)). 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.

EJY, with total assets of approximately \$36.8 billion, is the fourth largest banking organization in Chile.² EJY, through its subsidiaries, including BCI, engages in banking and insurance services throughout Chile. Outside Chile, BCI operates representative offices in Peru, Brazil, Colombia, Mexico, and Spain. In the United States, BCI operates a branch in Miami, Florida. EJY and BCI are each qualifying foreign banking organizations and on consummation of the proposal would continue to meet the requirements for a qualifying foreign banking organization under Regulation K.³

CM Florida, with consolidated assets of approximately \$5.6 billion, is the 215th largest insured depository organization in the United States, controlling approximately \$4.3 billion in deposits.⁴ CM Florida controls City National, which operates only in Florida. City National is the 18th largest insured depository institution in Florida, controlling approximately \$4.3 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁵

On consummation of the proposal, EJY through BCI would become the 180th largest insured depository organization in the United States, with consolidated assets in the United States of approximately \$7.5 billion, which represents less than 1 percent of the total assets of insured depository organizations in the United States. EJY would control approximately \$4.3 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in the United States. In Florida, EJY would become the 18th largest depository organization, controlling approximately \$4.3 billion in deposits, representing less than 1 percent of the total deposits of insured depository institutions in that state.

Factors under the Bank Holding Company Act

The BHC Act sets forth the factors that the Board must consider when reviewing the formation of bank holding companies or the acquisition of banks. These factors include the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; the availability of information to determine and enforce compliance with the BHC Act and other applicable federal banking laws; the convenience and needs of the communities to be served, including the records of performance of the insured depository institutions involved in the transaction under the Community Reinvestment Act (“CRA”);⁶ the effects of the acquisition on financial stability; and, in the case of an application involving a foreign bank, whether the foreign bank, including its parent holding company, is subject

² Foreign asset and ranking data are as of March 31, 2015.

³ 12 CFR 211.23(a).

⁴ Asset and nationwide deposit data are as of March 31, 2015, unless otherwise noted.

⁵ Statewide deposit-ranking data are as of June 30, 2014. In this context, insured depository institutions include commercial banks, savings banks, and savings and loan associations.

⁶ U.S.C. § 2901 *et seq.*

to comprehensive supervision and regulation on a consolidated basis by its home country supervisor.⁷

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.⁸

Applicants and CM Florida do not compete in any relevant banking market.⁹ Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval of the proposal.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved, as well as the effectiveness of these companies in combatting money-laundering activities.¹⁰ The Board also considers whether an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.

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 on a pro forma basis, 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.

The capital levels of both EJY and BCI exceed the minimum levels that would be required under the Basel Capital Accord and are considered to be equivalent to the capital levels that

⁷ U.S.C. § 1842(c).

⁸ 12 U.S.C. § 1842(c)(1).

⁹ BCI's Miami branch is not insured by the Federal Deposit Insurance Corporation and generally cannot accept retail deposits.

¹⁰ The Board has analyzed the effectiveness of Applicants' anti-money-laundering efforts in connection with the Board's assessment of whether Applicants are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.

would be required of a U.S. banking organization.¹¹ BCI's reported earnings performance and asset quality indicators, including nonperforming loans and reserves for loan losses, are consistent with approval. The proposed transaction is structured as cash for purchase of shares. BCI would fund the transaction with existing resources, including previously issued subordinated debt of \$311.8 million.¹² Applicants appear 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 Applicants have 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 Applicants' U.S. operations, CM Florida, and City National, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Applicants, the Board's supervisory experience and those of the other relevant bank supervisory agencies with the organizations, including through consultations in connection with this proposal, and the organizations' records of compliance with applicable banking and anti-money-laundering laws. The Board also has consulted with the Superintendencia de Bancos e Instituciones Financieras ("SBIF"), the agency with primary responsibility for the supervision and regulation of Chilean banking organizations, including BCI.

The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which the Applicants operate and has communicated with relevant government authorities concerning access to information. In addition, Applicants have committed that they will make available to the Board such information on their operations and the operations of their affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act, and other applicable federal laws.

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

Supervision or Regulation on a Consolidated Basis

In evaluating this application, and as required by section 3 of the BHC Act, the Board considered whether the Applicants are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.¹³

¹¹ The Board considered the total and tier1 risk-based capital ratios and the ratio of tier 1 capital to total consolidated assets of EJY and BCI. In addition, EJY and BCI provided common equity tier 1 capital ratios calculated under U.S. rules as part of the capital equivalency assessment.

¹² At consummation, BCI would be well capitalized. In addition, BCI will increase its capital through an equity offering of approximately \$360 million. EJY would subscribe to its 55 percent (\$198 million) pro rata share of the equity offering, funded through the issuance of approximately \$216 million in debt to third parties. Upon completion of the capital raise, both BCI and EJY would continue to have capital levels equivalent to the capital levels that would be required of a U.S. banking organization.

¹³ 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign bank is subject to consolidated home country supervision under the standards set forth in Regulation K. *See* 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii).

In assessing this standard under section 211.24 of Regulation K, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information

Banco de Credito e Inversiones. As noted, the SBIF is the primary supervisor of Chilean banks, including BCI. The Board previously has determined, in connection with an application to establish an agency, that BCI is subject to comprehensive supervision on a consolidated basis by the SBIF.¹⁴ The SBIF obtains information on BCI's operations through annual on-site examinations and its review of audit and financial reports submitted by BCI. BCI's asset quality and capital also are reviewed annually. As part of the examinations, the SBIF reviews BCI's internal controls, and BCI provides reports to the SBIF on the scope of its internal audits. The SBIF requires BCI to meet minimum capital ratios and prohibits BCI from extending credit to affiliates on terms more favorable than those offered to third parties. The SBIF has the authority to impose sanctions on BCI and its directors, officers, and managers if necessary to enforce compliance with its regulations.

Empresas Juan Yarur. In assessing whether EJY may be considered subject to consolidated supervision, the Board has considered a number of factors. The Board has long held that "the legal systems for supervision and regulation vary from country to country, and comprehensive supervision or regulation on a consolidated basis can be achieved in different ways."¹⁵ In addition, the Board makes case-by-case, institution-specific determinations under the comprehensive supervision standard.¹⁶ In considering previous cases in which a foreign bank was owned by a nonbank parent company, the Board has stated that the system of comprehensive supervision or regulation may vary, depending on the nature of the acquiring company and the proposed investment.¹⁷ In light of this background, the Board has taken the following facts into account:

Prior to this proposal, EJY was part of a complex structure of family-affiliated nonbank companies that owned a controlling interest in BCI. None of these companies was subject to consolidated regulation or supervision by governmental authorities. In order to address the issues raised by this organizational structure, the controlling shareholders committed to a significant restructuring and simplification of the ownership of BCI. Under this proposal, EJY would become the sole parent company of BCI. No other company would own directly or indirectly more than 5 percent of the voting shares of BCI or EJY. Upon completion of the restructuring, EJY would operate as a shell holding company. BCI would comprise approximately 98 percent of the assets of EJY. EJY would also own three regulated insurance companies in Chile, constituting the remaining 2 percent of the assets of EJY.

EJY and its subsidiaries together are a financial group under Chilean law. Since 2004, Chile has taken numerous steps to provide greater transparency for such groups by giving financial regulators the ability to obtain information on the owners of regulated financial institutions. In October 2014, Chile adopted new legislation that gives the SBIF new authority

on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationships between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is determinative, and other elements may inform the Board's determination.

¹⁴ *Banco de Credito e Inversiones S.A.*, 85 *Federal Reserve Bulletin* 446 (1999). In addition, the Board previously has determined that three other Chilean banks are subject to comprehensive supervision on a consolidated basis by the SBIF. See *Corpanca*, 95 *Federal Reserve Bulletin* B57 (2008); *Banco del Estado de Chile*, 91 *Federal Reserve Bulletin* 442 (2005); and *Banco de Chile*, 90 *Federal Reserve Bulletin* 550 (2004).

¹⁵ See *Industrial and Commercial Bank of China Limited* ("ICBC-CIC Order"), FRB Order No.2012-4 (May 9, 2012) and 57 *Federal Register* 12992,12995 (April 15, 1992).

¹⁶ See *ICBC-CIC Order* and 58 *Federal Register* 6348,6349 (January 28, 1993).

¹⁷ *Id.*; *China Investment Corporation*, 96 *Federal Reserve Bulletin* B31, at B33 (2010).

with respect to controlling shareholders of Chilean banks.¹⁸ The SBIF may require such companies to meet a solvency ratio.¹⁹ The SBIF may also inspect the books and records of any such company in order to assess the effect of the parent company on the bank.²⁰ Chilean law also limits the ability of Chilean banks to engage in transactions with affiliates, including parent companies.²¹

Chilean law also provides that regulators of financial institutions may share information with each other. The SBIF, as the regulator of banks, and the Superintendencia de Valores y Seguros (“SVS”), as the regulator of securities and insurance companies, regularly meet as part of the Financial Stability Council and may share information at any time. EJY is also registered with the SVS. As a registered company, EJY is required to publish annual audited financial statements. The SBIF has confirmed its ability and willingness to share information as necessary with the Board concerning operations of BCI and EJY.

The Board has taken into account that EJY is not an operating company and that EJY’s proposed investment in CM Florida and City National would be indirect and made through a foreign bank that is subject to consolidated supervision by the SBIF. Moreover, as noted, BCI and its regulated insurance affiliates comprise virtually 100 percent of the assets of EJY. EJY also has made a number of commitments in connection with this application. It would remain a non-operating company and would not acquire control of any company other than a regulated financial services company in Chile without the Board’s approval. EJY would make its books and records available to the SBIF and the Board to determine compliance with these commitments. The SBIF has confirmed that it is willing and has the authority to access and monitor the books and records of EJY in order to determine EJY’s continuing compliance with these commitments. In addition, the SBIF may share with the Board all information gathered through its monitoring of EJY and has indicated its willingness to assist the Board in obtaining any additional information the Board may require from EJY and its affiliates. These commitments and the involvement of the SBIF in monitoring these commitments limit the ability of EJY to undertake new activities, to make unregulated investments, or to engage in operations or activities outside the scope of appropriate governmental oversight. Moreover, CM Florida and City National would be owned and operated by BCI, which is fully subject to supervision and regulation by the SBIF.

Based on all the facts of record, including the structure and limited activities of EJY, the commitments made by BCI and EJY, and the cooperation offered by the SBIF, the Board determines that EJY and BCI are subject to comprehensive supervision on a consolidated basis by their home country supervisor for purposes of this proposal.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served. 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 CRA. In addition, the Board considers the banks’ overall

¹⁸ Law No. 20.789, Gazette No. 9178-05 (2014). Chilean General Banking Law (Ley General de Bancos, “LGB”), Article 16.

¹⁹ Article 28, LGB.

²⁰ Article 16, LGB.

²¹ See Articles 84–85, LGB.

compliance records, the results of recent fair lending examinations and other supervisory assessments, the supervisory views of examiners, other supervisory information, and comments received on the proposal. The Board may also consider the institution's business model, its marketing and outreach plans, the organization's plans following consummation, and any other information the Board deems relevant.

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,²² 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.²³ In addition, fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics.

The Board received a comment from a commenter who objected to the proposal principally on the basis of City National's record of extending home mortgage credit, including refinancing credit, to minority individuals in the Fort Lauderdale, Miami, and Orlando Metropolitan Statistical Areas as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")²⁴ for 2011.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.²⁵ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of City National,²⁶ its fair lending and compliance records, the supervisory views of the Office of the Comptroller of the Currency ("OCC"), confidential supervisory information, information provided by Applicants, and the public comment received on the proposal.

City National's Business and Applicants' Response to Comment. City National engages primarily in commercial lending, corporate cash management, and private banking. As of September 30, 2014, commercial real estate loans and commercial and industrial loans accounted for approximately 57 percent of the loan portfolio. Residential real estate lending represented approximately 26.1 percent of the loan portfolio. Applicants argued that the commenter's assessment of City National's lending performance did not accurately reflect the bank's performance when reviewed in the context of a broader range of data.

²² 12 U.S.C. § 2901(b).

²³ 12 U.S.C. § 2903.

²⁴ 12 U.S.C. § 2801 *et seq.*

²⁵ Other data relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

²⁶ BCI's Miami branch may not take insured deposits and therefore is not subject to the CRA.

A. Record of Performance under the CRA

As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance in light of examinations and other supervisory information provided by the appropriate federal supervisors.²⁷

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

In general, federal 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 of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;²⁹ 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 City National. City National was assigned an overall "Outstanding" rating at its most recent publicly available CRA examination as of May 29, 2012 ("City National Evaluation"),³⁰ conducted by the OCC, with ratings of "Outstanding" for the Lending, Investment, and Services Tests.

²⁷ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642,11665 (2010).

²⁸ 12 U.S.C. § 2906.

²⁹ 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).

³⁰ The City National Evaluation was conducted using the Large Institution CRA Examination Procedures. The evaluation period for the Lending Test, including community development loans, was January 1, 2009, through December 31, 2011. For the Investment and Service Tests, the evaluation period was May 18, 2009 (the date of the previous CRA examination), through May 29, 2012. Examiners conducted a full-scope review of the

Examiners found that City National demonstrated good responsiveness to assessment area credit needs with respect to the bank's lending activity. Examiners also found that City National originated a substantial majority of its loans within its assessment area and that the bank had an excellent geographic distribution of its loans throughout its assessment area. Examiners found that the bank had an adequate distribution of loans among borrowers of different income levels and businesses of different sizes. Home mortgage lending activity was considered adequate. Examiners considered the bank's lending in light of its primary business focus and noted that, historically, the bank has not been a traditional retail-focused institution and does not actively market a variety of home mortgage products, unlike other institutions in its assessment area. Small business lending activity was considered good and examiners found the bank to have an excellent level of community development loans.

Examiners found City National to have an excellent level of qualified community development investments in the bank's Miami-Fort Lauderdale-Palm Beach assessment area. Examiners noted that the bank made a significant investment in a qualified investment fund backed by multiple mortgages on properties that provide affordable rental housing to LMI residents. In addition, examiners noted that the bank's community development investments help address the need for employment for LMI persons in the assessment area.

In evaluating the Service Test, examiners noted that City National's retail delivery systems were excellent and readily accessible to all geographies and to individuals of different income levels. Examiners found that City National provided a relatively high level of community development services that were responsive to assessment area needs, particularly those related to financial literacy and affordable housing.

City National's Efforts since the City National Evaluation. Since the City National Evaluation, City National has implemented several programs for lending to underserved communities and individuals in its assessment area. For example, City National has engaged in a partnership with Neighborhood Housing Services of South Florida ("NHSSF").³¹ In addition, City National recently approved the establishment of a down payment assistance program that will provide qualified applicants with the lesser of 2 percent or up to \$2,000 for a down payment. City National also created a program in which qualified borrowers can refinance their existing mortgage to take advantage of lower interest rates. The program allows for LMI families to refinance without any costs, as City National will be assuming the costs of the new loan as part of the program.

Views of Other Regulators. The Board has considered the record of City National in complying with fair lending and other consumer protection laws. In particular, the Board has reviewed the results of consumer compliance examinations of City National conducted by the OCC. The examination reports discuss City National's record of compliance with fair lending and other consumer protection laws and regulations and the bank's policies and procedures to help ensure compliance with fair lending and other consumer protection laws and regulations.

Miami-Ft. Lauderdale-Palm Beach, Florida assessment area, which accounted for 92 percent of the bank's deposits in the market. The bank has received an overall "Outstanding" CRA rating from the OCC at each of its evaluations since 2003.

³¹ As a result, 17 senior officers from City National committed over 100 hours of service to coordinate, structure, develop, and implement the NHSSF CitySmart Affordable Housing Program. This program provides NHSSF with ongoing expertise from City National and access to credit for LMI home purchasers.

B. Public Benefits of the Proposal

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. In this regard, Applicants have stated that they intend to maintain City National's existing fair lending policies and procedures following consummation of the transaction. Applicants have indicated they will serve as a source of strength to City National following the proposed acquisition and will provide additional resources to City National to allow the institution to continue to serve the needs of its local communities. Applicants also represent that BCI intends to leverage its experience and capabilities to work with existing management to explore the possibility of expanding the products and services that City National offers to its customers.

C. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the record of the relevant depository institution involved under the CRA, the institution's record of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Applicants, and the public comment on the proposal. Based on that review, the Board concludes that the proposal would result in public benefits and 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."³²

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, availability of substitute providers for any critical products and services offered by the resulting firm, interconnectedness of the resulting firm with the banking or financial system, extent to which the resulting firm contributes to the complexity of the financial system, and extent of the cross-border activities of the resulting firm.³³ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opacity and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.³⁴

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Applicants would have assets of approximately \$42.4 billion, most of which would be outside the United States. The pro forma organization would have minimal cross-border activities and would not exhibit an organizational

³² Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

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

³⁴ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

structure, complex interrelationships, or unique characteristics that would complicate resolution of BCI or City National in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all the 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 hereby approves the proposed transaction.³⁵ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Applicants with all the commitments made to and relied on by the Board in connection with the application and on receipt of all other regulatory approvals. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective September 21, 2015.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

³⁵ A commenter requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board concludes that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

Order Issued Under Section 4 of the Bank Holding Company Act

M&T Bank Corporation
Buffalo, New York

Manufacturers and Traders Trust Company
Buffalo, New York

Order Approving the Acquisition of a Savings and Loan Holding Company, Merger of Depository Institutions, and Establishment of Branches
FRB Order No. 2015-27 (September 30, 2015)

M&T Bank Corporation, Buffalo, New York, and its subsidiary, Wilmington Trust Corporation, Wilmington, Delaware (collectively, “M&T”), both financial holding companies within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”), have requested the Board’s approval under sections 4(c)(8) and (j) of the BHC Act and section 225.24 of the Board’s Regulation Y¹ to acquire Hudson City Bancorp, Inc. (“Hudson City”), and its wholly owned subsidiary, Hudson City Savings Bank (“HCB”), both of Paramus, New Jersey. HCB is a savings association for purposes of the BHC Act.

In addition, M&T’s subsidiary state member bank, Manufacturers and Traders Trust Company (“M&T Bank”), Buffalo, New York, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”)² to merge with HCB, with M&T Bank as the surviving entity. M&T Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the locations of HCB’s main office and branches.³

Notice of the proposals, affording interested persons an opportunity to submit comments, has been published (77 *Federal Register* 60119 (October 2, 2012)).⁴ As required by the Bank Merger Act, a report on the competitive effects of the bank merger was requested from the United States Attorney General. The time for submitting comments has expired, and the Board has considered the proposals and all comments received in light of the factors set forth in section 4 of the BHC Act, the Bank Merger Act, and the FRA.

M&T, with consolidated assets of approximately \$97.1 billion, is the 31st largest insured depository organization in the United States, controlling deposits of approximately \$72.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ M&T controls two insured depository institutions, M&T Bank and Wilmington Trust, National Association (“WTNA”), Wilmington, Delaware, which together have retail banking operations in eight states and the District of Columbia.⁶ M&T Bank is the eighth largest insured depository institution in New York, controlling deposits of approximately \$36.0 billion, which represent 2.8 percent of the total deposits of insured depository institutions in that state.⁷ M&T Bank is the 118th largest insured depository institution in New Jersey, controlling deposits of approximately

¹ 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.

² 12 U.S.C. § 1828(c).

³ 12 U.S.C. § 321. These locations are listed in the appendix.

⁴ 12 CFR 262.3(b).

⁵ Asset and nationwide deposit-ranking data are as of June 30, 2015, unless otherwise noted. Insured depository institutions include insured commercial banks, savings and loan associations, and savings banks.

⁶ M&T’s subsidiary banks have retail banking operations in Delaware, Florida, Maryland, New Jersey, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia.

⁷ State deposit data are as of June 30, 2014.

\$103.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Hudson City, with consolidated assets of approximately \$35.4 billion, is the 49th largest insured depository organization in the United States, controlling deposits of approximately \$18.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Hudson City controls HCB, which operates in Connecticut, New Jersey, and New York. HCB is the fifth largest insured depository institution in New Jersey with approximately \$16.5 billion in deposits, which represent 5.8 percent of the total deposits of insured depository institutions in that state. In addition, HCB is the 35th largest insured depository institution in New York with approximately \$3.1 billion in deposits, and the 16th largest insured depository institution in Connecticut with approximately \$1.0 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in each of those states.

On consummation of the proposals, M&T would become the 25th largest depository organization in the United States, with consolidated assets of approximately \$132.5 billion. M&T would have consolidated deposits of approximately \$90.8 billion, representing less than 1 percent of the total deposits of insured depository institutions in the United States.

M&T would remain the eighth largest depository organization in New York, controlling deposits of approximately \$39.1 billion, representing 3.0 percent of the total deposits of insured depository institutions in the state. In addition, M&T would become the fifth largest depository organization in New Jersey, controlling deposits of approximately \$16.6 billion, representing 5.8 percent of the total deposits of insured depository institutions in the state.

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.⁸ The Board requires that savings associations acquired by bank holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4 of the BHC Act. M&T has committed that all the activities of Hudson City and its subsidiaries will conform to those permissible under section 4 of the BHC Act and Regulation Y or be divested.

Interstate and Deposit Cap Analyses

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)⁹ amended section 4 of the BHC Act¹⁰ and the Bank Merger Act¹¹ to provide that, in general, the Board may not approve an application by a bank holding company to acquire an insured depository institution, or an application by one insured depository institution to acquire another insured depository institution, if the home state of the target insured depository institution is a state other than the home state of the applicant and the applicant controls or would control upon consummation of the proposed transaction more than 10 percent of the total amount of deposits of insured depository institutions in the United States. For purposes of the BHC Act and the Bank Merger Act, the home state of M&T and M&T Bank is New York and the home state of HCB is New Jersey.¹² Consummation

⁸ 12 CFR 225.28(b)(4)(ii).

⁹ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

¹⁰ Dodd-Frank Act § 623(b), 124 Stat. at 1634–35, codified at 12 U.S.C. § 1843(i)(8).

¹¹ Dodd-Frank Act § 623(a), 124 Stat. at 1634, codified at 12 U.S.C. § 1828(c)(13).

¹² 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,

of the proposals would result in M&T controlling less than 1 percent of the deposits of U.S. insured depository institutions. The proposed acquisition of HCB would not be prohibited by the law of any state in which HCB is located.¹³ Accordingly, in light of all the facts of record, the Board is not required to deny the proposals under section 4(i) of the BHC Act or the interstate merger provisions of the Bank Merger Act.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.¹⁴ The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of communities to be served.¹⁵ In addition, the Board considers the competitive effects of a proposal to acquire a savings association under the balancing test of section 4(j) of the BHC Act.¹⁶

M&T and Hudson City have subsidiary depository institutions that compete directly in the Metro New York City and Philadelphia banking markets.¹⁷ The Board has reviewed the competitive effects of the proposals in those banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of the total deposits in insured depository institutions in the markets (“market deposits”) that M&T would control,¹⁸ the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”),¹⁹ and other characteristics of the markets.

whichever is later. 12 U.S.C. § 1841(o)(4)(C). A state bank’s home state is the state by which the bank is chartered. 12 U.S.C. § 1828(c)(13)(C)(ii)(II). A federal savings association’s home state is the state in which the home office of the savings association is located. 12 U.S.C. §§ 1828(c)(13)(C)(ii)(III) and 1841(o)(4)(E).

¹³ The merger of HCB into M&T Bank is subject to the approval of the New York Department of Financial Services (“NYDFS”). See N.Y. Banking Law §600. M&T Bank has filed the relevant applications with the NYDFS.

¹⁴ 12 U.S.C. § 1828(c)(5).

¹⁵ 12 U.S.C. § 1828(c)(5)(B).

¹⁶ 12 U.S.C. § 1843(j)(2)(A).

¹⁷ The Metro New York City banking market includes Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties and portions of Columbia and Greene counties, all in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union counties and portions of Burlington, Mercer, and Warren counties, all in New Jersey; Pike County and portions of Monroe and Wayne counties, all in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven counties, all in Connecticut.

The Philadelphia banking market includes Bucks, Chester, Delaware, Montgomery, and Philadelphia counties, all in Pennsylvania; and Camden, Cumberland, Gloucester, and Salem counties and portions of Burlington and Mercer counties, all in New Jersey.

¹⁸ Deposit and market share figures are from the summary of deposits data reported by insured depository institutions as of June 30, 2014, and are based on calculations in which the deposits of thrift institutions are included. The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386(1989); *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).

¹⁹ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than

Consummation of the proposals would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for these markets. On consummation of the proposals, both the Metro New York City and Philadelphia banking markets would become less concentrated, as measured by the HHI, because of the proposed conversion of HCB from a savings association to a full-service bank, and numerous competitors would remain.²⁰

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

Based on all the facts of record, the Board concludes that consummation of the proposals would not have a significantly adverse effect on competition or on the concentration of resources in the banking markets in which M&T and Hudson City compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In addition to assessing the competitive effects of a proposal, in every case under the Bank Merger Act the Board must take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, the convenience and needs of the communities to be served, records of compliance with anti-money-laundering laws, and the risk to the stability of the United States banking or financial system. The Board also considers these factors in weighing the possible adverse effects of the transaction against its public benefits, as required by section 4(j) of the BHC Act.²¹

Consideration of Financial Factors. In its evaluation of the financial factors, the Board reviews information regarding the financial condition of the organizations involved on

200 points. Although the DOJ and the Federal Trade Commission have issued revised Horizontal Merger Guidelines, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. See Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

²⁰ The HHI would decrease in each market as follows: 15 points to 1355 in Metro New York City and 5 points to 995 in Philadelphia. The decreases result from a pre-merger weighting of HCB's market deposits at 50 percent and a post-merger weighting at 100 percent. See *Norwest Corporation*, 78 *Federal Reserve Bulletin* 452(1992); *First Banks, Inc.*, 76 *Federal Reserve Bulletin* 669(1990) (deposits of thrifts are included in pre-merger market share calculations on a 50-percent weighted basis but included at 100 percent in the calculation of pro forma market share because the deposits would be acquired by a commercial banking organization). The resulting pro forma share of M&T's market deposits would be 1.8 percent in Metro New York City and 1.6 percent in Philadelphia. The combined organization would compete in the Metro New York City and Philadelphia banking markets with 236 and 102 other banking organizations, respectively.

²¹ Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of Hudson City "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system." 12 U.S.C. § 1843(j)(2)(A). As part of its evaluation of these factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, the risk to the stability of the United States banking or financial system, records of compliance with anti-money-laundering laws, and the public benefits of the proposal. 12 CFR 225.26; see, e.g., *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012) ("*Capital One Order*"); *Bank of America Corporation/Countrywide*, 94 *Federal Reserve Bulletin* C81(2008); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C138(2006); *BancOne Corporation*, 83 *Federal Reserve Bulletin* 602(1997). In acting on a notice to acquire a savings association, the Board reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act ("CRA"). 12 U.S.C. § 2901 *et seq.*

both parent-only and consolidated bases, as well as information about 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 public and supervisory information regarding capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal.²² 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 proposals in light of their financial and managerial resources and the proposed business plan.

M&T and its subsidiary depository institutions are well capitalized and would remain so on consummation of the proposed transactions. The proposal is a merger structured as a cash and share exchange.²³ The asset quality, earnings, and liquidity of M&T are consistent with approval. M&T appears to have adequate resources to absorb the costs of the proposals and to complete the integration of the institutions' operations.

Consideration of Managerial Factors. In its evaluation of the managerial factors, the Board considers the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of M&T, Hudson City, and their subsidiary depository institutions, including assessments of their management, risk-management programs, and operations. In addition, the Board has considered information provided by M&T, the supervisory experiences that the Board and other relevant bank supervisory agencies have had with the organizations, and the organizations' records of compliance with applicable banking, consumer, and antimoney-laundering laws, as well as information provided by commenters.

A bank's risk-management program comprises, among other functions, systems and procedures for ensuring regulatory compliance, which includes Bank Secrecy Act/anti-money-laundering ("BSA/AML") compliance.²⁴ As M&T has acknowledged, following the submission of M&T's application to acquire Hudson City, examinations conducted by the Federal Reserve Bank of New York ("Reserve Bank") revealed significant weaknesses in M&T's risk-management program.²⁵ In particular, examiners identified weaknesses in M&T's overall BSA/AML compliance management program. The weaknesses included a lack of robust and comprehensive systems for collecting, processing, and updating information needed to make money-laundering risk determinations for every customer and account. There were also weaknesses in M&T's processes and policies for identifying and reporting suspected structuring activities and other suspicious activities.²⁶

²² 12 U.S.C. §§ 1828(c)(5) and (11). A commenter alleges that the acquisition is "too large" for M&T. Another commenter expressed concerns regarding the impact of Hurricane Sandy on properties securing mortgage loans extended by Hudson City.

²³ At closing, 40 percent of the merger consideration would be paid in cash. The remaining merger consideration would be a stock exchange in which each share of Hudson City common stock would be converted into a right to receive shares of M&T common stock, based on an exchange ratio. M&T would fund the cash portion of the transaction with cash on hand. M&T has the financial resources to effect the transaction.

²⁴ Federal Financial Institutions Examination Council, FFIEC BSA/AML Examination Manual 28 (2014), available at www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2014_v2.pdf.

²⁵ See Robert G. Wilmers, *M&T Bank 2013 Annual Report Message to Shareholders*, M&T Bank (March 7, 2014) ("2013 Report"), newsroom.mtb.com/document-archive/annual-report-letters/2013-annual-report-message-to-shareholders.htm.

²⁶ See Written Agreement among M&T Bank Corporation, Manufacturers and Traders Trust Company, and Federal Reserve Bank of New York, Docket Nos. 13-013-WA/RBHC and 13-013-WA/RB-SM (June 17, 2013), available at www.federalreserve.gov/newsevents/press/enforcement/enf20130617a1.pdf.

Also during the pendency of M&T's application, supervisory assessments identified weaknesses in M&T's consumer compliance program. In late 2014, the Consumer Financial Protection Bureau ("CFPB"), which also has supervisory responsibility over M&T Bank, issued an enforcement action against M&T Bank for deceptive practices relating to advertising, marketing, and promotion of a checking product.²⁷ Examinations conducted by the Reserve Bank revealed weaknesses in M&T's consumer compliance risk assessment, complaint management, and compliance monitoring and testing.

The identified weaknesses in M&T's BSA/AML and consumer compliance programs raised concerns about whether the company's managerial resources and the managerial resources of the proposed combined organization were consistent with approval. Before the Board completed its evaluation, M&T requested a stay of the Board's consideration of the proposals to afford M&T an opportunity to address the identified weaknesses. Based on the specific facts and circumstances of this case, particularly that the weaknesses first surfaced after consideration of M&T's proposals was well in progress, the Board suspended consideration of the proposals.²⁸ Thereafter, M&T dedicated significant financial and managerial resources to addressing the identified weaknesses.²⁹ The remedial actions taken by M&T required a significant period of time,³⁰ and M&T and Hudson City extended the term of their merger agreement multiple times.³¹

M&T has taken significant steps to remediate the identified BSA/AML and consumer compliance weaknesses and to implement comprehensive programs related to combatting money-laundering and complying with consumer protection laws and regulations. M&T also has provided the Board with numerous submissions relating to these efforts, and the Board has considered supervisory reviews related to these efforts.

M&T has made significant changes to its BSA/AML compliance program as required in M&T's Written Agreement with the Reserve Bank. In particular, M&T has instituted important enhancements to key systems and processes in its BSA/AML compliance program, including, for example, processes for collecting information to determine the extent to which a customer presents a money-laundering risk to the bank and for escalating accounts to senior management that are found to have repeatedly engaged in suspicious activity. In addition, M&T has conducted internal testing of, and has had independent third-party review to confirm, the efficacy of the changes the company has instituted to its BSA/AML compliance program.

²⁷ See Consent Order between Manufacturers and Traders Trust Company and Consumer Financial Protection Bureau, File No. 2014-CFPB-0016 (October 9, 2014), available at files.consumerfinance.gov/f/201410_cfpb_consent-order_m-t.pdf.

²⁸ The Board expects that a banking organization will resolve all material weaknesses identified by examiners before applying to engage in expansionary activity. See, e.g., SR Letters 14-2 and 13-7. As noted, M&T's issues largely arose during processing of this application, and the Board took the highly unusual step of permitting the case to pend while M&T addressed its weaknesses. The Board does not expect to take such action in future cases. Rather, in the future, if issues arise during processing of an application, the Board expects that a banking organization will withdraw its application pending resolution of any supervisory concerns.

²⁹ See 2013 Report.

³⁰ See Robert G. Wilmers, *M&T Bank 2014 Annual Report Message to Shareholders*, M&T Bank (March 5, 2015), newsroom.mtb.com/document-archive/annual-report-letters/2014-annual-report-message-to-shareholders.htm.

³¹ See Press Release, M&T Bank Corporation (April 12, 2013), available at newsroom.mtb.com/press-releases/mampt-and-hudson-city-make-announcement-relating-to-the-proposed-merger-of-the-two-companies.htm; Press Release, M&T Bank Corporation (December 17, 2013), available at newsroom.mtb.com/press-releases/mt-and-hudson-city-announce-extension-of-the-merger-agreement.htm; Press Release, M&T Bank Corporation (December 9, 2014), available at newsroom.mtb.com/press-releases/hudson-city-bancorp-inc-and-mt-bank-corporation-announce-further-extension-of-time-to-complete-proposed-merger-to-april-30-2015.htm; Press Release, M&T Bank Corporation (April 17, 2015), available at newsroom.mtb.com/press-releases/hudson-city-bancorp-inc-and-mt-bank-corporation-announce-further-extension-of-time-to-complete-proposed-merger-to-october-31-2015.htm.

Similarly, M&T has made significant changes to its consumer compliance program to address previously identified weaknesses in the program. The changes M&T has implemented include, for example, the establishment of a process for managing consumer complaints and a process for rating the risks of noncompliance relating to laws. Where the risk of noncompliance is deemed to be moderate or high, M&T has established a schedule for testing compliance more frequently than peer institutions.

The Board has considered the results of several reviews conducted by Reserve Bank examiners of the actions M&T has taken to address the weaknesses in its BSA/AML and consumer compliance programs. The Board has also consulted with, and considered the views of, the CFPB.

In addition to considering the steps M&T has taken to address the weaknesses noted above, the Board has considered M&T's plans for operating the combined organization. M&T would bring significant financial and other resources to address the post-acquisition integration process for these proposals. M&T's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner. M&T has established a plan to integrate existing management and personnel of the Hudson City organization in a manner that augments the combined organization's management team.³²

Based on all the facts of record, including the steps M&T has implemented to address identified issues related to BSA/AML and consumer compliance, M&T's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, and subject to the conditions noted in this Order, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved, as well as the records of effectiveness of the organizations in combatting money-laundering activities, are consistent with approval.

This transaction would significantly increase the scope of M&T's operations by, among other things, expanding its geographic footprint and significantly increasing its asset size. The Board expects M&T to ensure that its riskmanagement framework and methodologies, as well as its compliance functions, are fully implemented, functioning effectively, and commensurate with its size and complexity, and that all risks within the organization are proactively identified and promptly addressed. The Board also expects that M&T will not engage in any expansionary activities, except for establishing branches in historically underserved communities, until supervisors are satisfied that the integration with Hudson City has been satisfactorily completed and examiners have confirmed that all risk-management and compliance systems at M&T are fully implemented, functioning effectively, adequate for proactively identifying and promptly addressing all risks within the combined organization, and reflective of its greater size and complexity. The Board will monitor M&T's efforts in this regard through the supervisory process.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.³³ The Board also considers this factor in weighing the possible adverse effects against the public benefits of the transaction, as required by section 4(j) of the BHC Act. In its evaluation of the effects

³² At closing, M&T and M&T Bank would augment their senior management teams with managers of Hudson City and HCB. In addition, the CEO of Hudson City would be appointed to the boards of M&T and M&T Bank, and all current members of the Hudson City board of directors would be appointed to a newly created regional advisory board that would advise M&T Bank on the activities in Hudson City's former market area.

³³ 12 U.S.C. § 1828(c)(5).

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 CRA.³⁴ 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,³⁵ 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.³⁶

In addition, the Board considers the banks' overall compliance record and the results of recent fair lending examinations. Fair lending laws require all lending institutions to provide loan applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics.

The Board also considers the supervisory assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicants, and comments received on the proposal. The Board also may consider the applicant institution's business model, marketing and outreach plans, plans following consummation, and any other information the Board deems relevant.

A. Public Comments Regarding the Proposal

In this case, the Board received comments from 27 commenters in support of the proposals. These commenters described favorable experiences with M&T and commended the company and its management for the bank's community outreach efforts and support for various community development programs and initiatives, such as financial literacy counseling, homebuyer workshops, and housing rehabilitation. Commenters also praised the level of M&T Bank's CRA-eligible grants, stating that the level is the highest among commercial banks in New York, New York, as a percentage of deposits. These commenters contend that the proposals would benefit consumers and the communities served by the combined organization.

The Board received 11 comments from four commenters objecting to the proposals principally on the basis of HCB's CRA performance record and M&T Bank's and HCB's records of extending home mortgage credit to minority individuals.³⁷ Commenters criticized HCB's CRA performance record and allege that M&T had not sufficiently explained how it would improve HCB's CRA performance following consummation of the proposals. A commenter alleges that HCB exhibited poor CRA performance in New Jersey, with a lower level of lending to LMI borrowers compared to other lenders in the bank's assessment areas and branch locations concentrated in middle- and upper-income neighborhoods. This commenter also alleges that, in New Jersey, three of HCB's four branches in

³⁴ 12 U.S.C. § 2901 *et seq.*

³⁵ 12 U.S.C. § 2901(b).

³⁶ 12 U.S.C. § 2903.

³⁷ Commenters also urged M&T to provide certain products and services at the combined organization, including free or low-cost checking accounts; fee and service charge waivers for LMI customers, senior citizens, and customers with disabilities; and lending programs for first-time homebuyers and small businesses. One commenter alleges that M&T refused to provide loans for the purchase of condominium units in a converted Washington, D.C., apartment building, during the period following M&T's 2009 acquisition of Provident Bankshares. Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available on certain terms or at certain rates, the CRA does not require an institution to provide any specific types of products or services nor does it prescribe the costs to be charged for them.

LMI neighborhoods did not operate on Saturday, unlike HCB's branches in middle- and upper-income neighborhoods, most of which operate on Saturday.³⁸ In addition, a commenter alleges that HCB did not establish adequate relationships with community groups in New Jersey.

Commenters also criticized M&T Bank's and HCB's record of mortgage lending to minority individuals, based on data reported for 2011 and 2013 under the Home Mortgage Disclosure Act of 1975 ("HMDA").³⁹ These commenters allege that M&T Bank and HCB made disproportionately fewer conventional residential mortgage loans to African American and Hispanic borrowers than to white borrowers, and that the institutions denied more applications for conventional home purchase loans by African American and Hispanic borrowers compared to white borrowers.⁴⁰ A commenter also contended that M&T Bank made more higher-priced HMDA-reportable loans to African American borrowers than to white borrowers,⁴¹ and denied disproportionately more HMDA-reportable loans to African American borrowers than to white borrowers.⁴²

M&T Bank's and HCB's Businesses and M&T's Responses to Comments. M&T Bank's lending activities are focused on consumers residing in Delaware, Maryland, New York, Pennsylvania, Virginia, and the District of Columbia, and on small- and medium-size businesses based in those areas. Commercial and industrial loans and loans secured by one-to-four family residential properties make up approximately 24 and 21 percent, respectively, of the bank's total loan portfolio.⁴³ As of June 30, 2012, M&T Bank had 764 domestic banking offices.

HCB is a community- and consumer-oriented retail savings association offering traditional retail deposit and loan products, such as conforming one-to-four family residential mortgages, time deposits, checking accounts, and savings accounts. HCB operates a total of 135 branches throughout the New York, New York, and Philadelphia, Pennsylvania, metropolitan areas.

M&T argues that focusing solely on denial disparities on conventional home purchase mortgage loans reported under HMDA does not accurately portray M&T Bank's and HCB's home mortgage lending record. In this regard, M&T contends that M&T Bank is a

³⁸ M&T represents that in 2012, HCB extended branch hours in its branches in Hudson and Essex counties, all in New Jersey, by opening two branches on Saturdays and extending lobby hours at a third branch.

³⁹ 12 U.S.C. § 2801 *et seq.* One commenter also alleges that a "mystery shopper" program conducted by the commenter showed that M&T Bank engaged in disparate treatment of African American and Hispanic borrowers compared to white borrowers in home equity conversion mortgage loan ("reverse mortgage loan") originations. The commenter filed a complaint concerning these allegations against M&T with the Department of Housing and Urban Development, which dismissed the complaint after review.

A commenter argues that the proposal should not be approved because a court complaint was filed against M&T Bank by a community group alleging that M&T discriminated against minority women applicants by steering them towards certain loan products and neighborhoods. *Fair Housing Justice Center, Inc. v. M&T Bank Corporation*, No. 1:15cv-00779-KBF (S.D.N.Y. 2015). The parties agreed to settle the matter, and the case was dismissed with prejudice and without any admission of wrongdoing.

⁴⁰ With respect to M&T Bank, these allegations related to the Nassau-Suffolk, New York, Metropolitan Division ("Long Island MD"); the Baltimore-Towson, Maryland, Metropolitan Statistical Area ("MSA"); and the New York, New York; Philadelphia, Pennsylvania; and Washington, D.C., areas. With respect to HCB, these allegations related to the Long Island MD; the New York, New York, area; the Bridgeport-Stamford-Norwalk, Connecticut, MSA ("Bridgeport MSA"); the Newark-Union, New Jersey-Pennsylvania, Metropolitan Division; and the New York-White Plains-Wayne, New York-New Jersey, Metropolitan Division.

⁴¹ For example, commenters allege that in 2013, 5.41 percent of M&T's loans to African American borrowers were above the rate spread, compared to 2.99 percent of its loans to white borrowers.

⁴² Commenters allege that M&T denied 26.26 percent of applications from African American borrowers, compared to 13.3 percent of applications from white borrowers.

⁴³ Manufacturers and Traders Trust Company, Consolidated Report of Condition and Income, at 19-20 (data as of June 30, 2015).

significant originator of government-sponsored mortgage loans and offers its own portfolio of affordable mortgages, which are designed to enhance the opportunities for borrowers across all socioeconomic strata to qualify for home purchase loans.⁴⁴ M&T argues that these loans provide more flexible features than conventional home purchase mortgage loans, including below-market rates, less cash required out-of-pocket from borrowers, lender credits that can be used for closing-cost assistance, and reduced down payment and reserve requirements. Moreover, M&T contends that M&T Bank has numerous lending programs with features that do not qualify as conventional home purchase loans and that these programs generally offer loans with higher risk levels and loan-to-value ratios, lower down payment requirements, and require smaller cash outlays when compared to conventional home mortgage loans.⁴⁵

With respect to HCB, M&T represents that all loans originated by the bank, regardless of the borrower's race or ethnicity, are subject to the same credit underwriting and pricing standards used industry-wide, including loan-to-value ratios and debt-to-income ratios. Moreover, M&T argues that a more accurate picture of HCB's mortgage lending activities emerges when considering loan types other than the conventional home purchase loans on which commenters focused, such as refinance loans and home-improvement loans.⁴⁶

M&T further contends that the apparent denial disparities in the areas identified by the commenters for both M&T Bank and HCB are due to the creditworthiness of the applicants and are not the result of discrimination on a prohibited basis. In this regard, M&T argues there were nondiscriminatory reasons for denial that include inadequate collateral, insufficient income for the amount of credit, excessive obligation in relation to income, insufficient funds to close, lack of documentation or incomplete credit application, or inability to obtain mortgage insurance.

B. Records of Performance under the CRA

As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance in light of examinations and other supervisory information as well as information and views provided by the appropriate federal supervisors.⁴⁷

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.⁴⁸ An institution's most recent CRA performance evaluation is a particularly important consideration in the appli-

⁴⁴ M&T Bank is an active provider of loans backed by the Federal Housing Administration ("FHA"), United States Department of Agriculture ("USDA"), and Department of Veterans Affairs ("VA"), as well as state-sponsored programs. For example, during 2010 through 2012, M&T Bank funded 28,961 federally backed loans worth approximately \$5.3 billion and 958 loans backed by the State of New York Mortgage Agency worth approximately \$127.6 million.

⁴⁵ For example, M&T Bank's proprietary versions of the standard FHA, VA, and USDA mortgage products provide LMI borrowers and those purchasing in LMI census tracts with discounted rates and lender credits that can be used for closing-cost assistance.

⁴⁶ For example, M&T argues that, although HCB originated only 10 conventional home purchase loans to African American borrowers in the New York, New York, area in 2011, HCB approved 24 of 25 home-purchase loan applications by mixed-race applicants and 44 of 56 of such loan applications by Hispanic applicants in the same area in 2011. In addition, HCB approved 50 percent of applications by African American borrowers and approximately 65 to 70 percent of applications by Hispanic borrowers for refinance and home improvement loans during 2011 in the New York, New York area.

⁴⁷ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (March 11, 2010).

⁴⁸ 12 U.S.C. § 2906.

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

In general, federal financial supervisors apply 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 of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;⁴⁹ 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. 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.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.⁵⁰ 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 M&T Bank and HCB, the fair lending and compliance records of both banks, the supervisory views of the Office of the Comptroller of the Currency ("OCC") and the CFPB, confidential supervisory information, information provided by M&T, and the public comments received on the proposal.

CRA Performance of M&T Bank. M&T Bank, the lead bank subsidiary for M&T, was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the Reserve Bank, as of July 9, 2012 ("M&T Bank Evaluation").⁵¹ M&T Bank received

⁴⁹ 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).

⁵⁰ Other data relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

⁵¹ The M&T Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test, the Investment Test, and the Service Test was from January 1, 2010, through

a “High Satisfactory” rating on the Lending Test and “Outstanding” ratings on both the Investment Test and the Service Test.

In assigning M&T Bank a “High Satisfactory” rating for the Lending Test, examiners found that M&T Bank demonstrated good responsiveness to the retail credit needs of its assessment areas. The bank originated a majority of its loans within its assessment areas and had good overall distribution of loans among borrowers of different income levels and businesses of different sizes.⁵² Examiners noted that the bank’s overall geographic distribution of HMDA-related and small business loans reflected good penetration in LMI geographies.⁵³ Examiners also noted that M&T Bank was a leader in community development lending and used various innovative and flexible products to enhance the level of lending to LMI geographies and borrowers. In addition, examiners determined that M&T’s community development lending, which had increased markedly since the previous CRA public evaluation, was responsive to community needs and served a variety of purposes, including financing of affordable housing, promoting economic development, revitalizing communities located in LMI tracts and empowerment zones, and providing services to benefit LMI individuals.

In evaluating the Investment Test, examiners assigned M&T Bank an “Outstanding” rating based on good to excellent performance in the bank’s key assessment areas—i.e., those with high concentrations of deposits and lending.⁵⁴ Examiners found that M&T Bank demonstrated good responsiveness to community credit needs and made use of complex investments to support community development initiatives. Examiners noted that more than 80 percent of the bank’s qualifying investments supported the development of affordable housing.

For the Service Test, examiners found M&T Bank’s performance to be excellent.⁵⁵ Examiners observed that the bank’s branches were readily accessible to all portions of its assessment areas and that the bank’s record of opening and closing branches had not adversely affected the overall accessibility of its delivery systems. Examiners found that M&T Bank was a leader in providing community development services, which included sponsorship and participation in a significant number of seminars and presentations relating to affordable mortgages, small business assistance, and other banking education offered throughout its assessment areas.

CRA Performance of WTNA. WTNA was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the OCC, as of May 6, 2013 (“WTNA Evalu-

June 30, 2012. Examiners considered HMDA-related and CRA-reportable small business loans originated between January 1, 2010, and December 31, 2011. Examiners also considered multifamily loans originated by M&T Real Estate Trust and M&T Realty Corporation, both subsidiaries of M&T Bank.

⁵² Examiners noted good loan distribution among borrowers of different income levels and businesses of different sizes in Maryland; New York; Pennsylvania; and the Cumberland, Maryland–West Virginia, MSA (“Cumberland MSA”). Examiners noted adequate loan distribution in Delaware; Florida; Virginia; the New York–Northern New Jersey–Long Island, New York–New Jersey–Pennsylvania, MSA (“New York City MSA”); the Philadelphia–Camden–Wilmington, Pennsylvania–New Jersey–Delaware–Maryland, MSA (“Philadelphia MSA”); and the Washington–Arlington–Alexandria, D.C.–Virginia–Maryland–West Virginia, MSA (“Washington MSA”).

⁵³ Examiners noted excellent geographic distribution in the Washington MSA and good distribution in Maryland, New York, Pennsylvania, Virginia, and the New York City MSA. Examiners noted adequate geographic distribution in Delaware, Florida, and the Cumberland and Philadelphia MSAs.

⁵⁴ Examiners noted excellent investment performance in Maryland, New York, and the Washington MSA; good investment performance in Delaware, Pennsylvania, and the Cumberland, New York City, and Philadelphia MSAs; and adequate investment performance in Florida and Virginia.

⁵⁵ Examiners noted excellent service performance in Maryland, New York, Pennsylvania, and the Washington MSA; good service performance in Virginia and the Cumberland and New York City MSAs; and adequate service performance in Delaware, Florida, and the Philadelphia MSA.

ation”).⁵⁶ Examiners noted that the bank demonstrated an adequate level of community development lending, qualified investment activity, and community development services. Examiners also noted that the bank demonstrated occasional use of innovative or complex qualified investments, community development loans, or community development services, and that the bank demonstrated excellent responsiveness to credit and community development needs in its assessment areas.

M&T's Efforts since the M&T Bank Evaluation. M&T represents that, since the M&T Bank Evaluation, it has continued to build upon its commitment to provide financial services to LMI individuals, within LMI geographies, to small businesses, and to underserved communities. For instance, M&T Bank has made community development loans in Delaware, Maryland, New Jersey, New York, and the District of Columbia to increase affordable housing, revitalize LMI geographies, increase educational services to children of LMI households, and develop medical facilities. The bank also has committed to CRA-qualified investments and provided community development grants in Delaware, New York, and Pennsylvania. In addition, the bank has offered a suite of products and services to address the credit needs of LMI borrowers, including mortgage loan products and unsecured installment loan products.

As noted above, earlier in the pendency of M&T's application, supervisory assessments by the Reserve Bank disclosed weaknesses in M&T's consumer compliance program. Since that time, M&T has undertaken efforts to address these weaknesses and provided the Board with substantial information relating to these efforts. M&T has made significant progress toward implementing a program acceptable to the Board and commensurate with the expanded scale and scope of the combined organization. In particular, M&T has implemented a compliance program that includes appropriate risk assessments, testing, and monitoring to ensure compliance with all consumer protection laws and regulations. Under this program, M&T conducts compliance testing more frequently than peer institutions. In addition, M&T has enhanced its processes for evaluating legal and regulatory changes applicable to the organization and for handling consumer complaints.

Reserve Bank examiners have conducted multiple on-site reviews to evaluate M&T's efforts to implement an enhanced consumer compliance program. These reviews indicate that M&T has made changes and enhancements to its consumer compliance systems and processes and has taken steps to address weaknesses that were identified in the examination process. Examiners noted that there are additional enhancements that can be made to some processes and systems to further improve the program and make it more effective. The Board has considered information provided by M&T and examiners' views regarding the improvements made by M&T to its consumer compliance program. The Board expects that M&T will swiftly and fully implement the additional improvements to enhance further the effectiveness of its consumer compliance program.

CRA Performance of HCB. HCB was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the Office of Thrift Supervision,⁵⁷ as of March 14,

⁵⁶ WTNA is a limited purpose bank for purposes of the CRA and was evaluated under the community development test. Examiners reviewed community development activities from May 18, 2009, through May 5, 2013. In assessing WTNA, OCC examiners reviewed WTNA's qualified community development investments, loans, and services and also considered the qualified community development activities of M&T Bank. See 12 CFR 25.25(d).

⁵⁷ The supervision of federally chartered savings associations was transferred to the OCC effective July 21, 2011. See Dodd-Frank Act § 312, Pub. L. No. 111-203, 124 Stat. 1376, 1521–23 (2010), codified at 12 U.S.C. § 5412.

2011 (“HCB Evaluation”).⁵⁸ HCB received a “Low Satisfactory” rating for the Lending Test, a “High Satisfactory” rating on the Investment Test, and a “Needs to Improve” rating on the Service Test.⁵⁹

In evaluating the Lending Test, examiners noted that HCB was among the market leaders in HMDA mortgage lending based on its volume of lending from 2008 through 2010. Through loan originations and purchases, HCB’s lending to LMI geographies was consistent with lending by the aggregate of lenders in HCB’s assessment areas. The bank also deployed two innovative and flexible loan products with reduced interest rates to meet community credit needs. The examiners assigned HCB a “Low Satisfactory” rating because, in examiners’ view, the level of community development lending was low compared to the resources available to the bank, and examiners suggested that HCB could improve its market share of community development lending.

Examiners assigned HCB a “High Satisfactory” rating on the Investment Test based on its level of qualified community development investments. From 2008 through 2010, the bank made significant investments in securities backed by mortgage loans made to LMI borrowers, with the majority of such loans having been originated in HCB’s assessment areas. These investments represented a significant increase from the prior evaluation period. HCB also doubled its investment in a nonprofit community development financial institution that provides innovative financing and technical assistance to foster the creation of quality homes, education facilities, and employment opportunities in underserved communities in New Jersey. Examiners noted that HCB made qualified community development donations during the evaluation period, including contributions to HCB’s affiliated charitable foundation.

In evaluating the Service Test, examiners noted that the bank was involved in a variety of community development service activities, including service to organizations that provide affordable housing and transitional housing to disadvantaged youth. The bank also sponsored, and provided employees for, foreclosure workshops and seminars. Examiners also observed that HCB provides a wide range of traditional thrift deposit and loan products through a substantial network, with most branches open on Saturdays and having ATMs, drive-up windows, walk-up windows, or a combination thereof, for customer convenience. Examiners also noted that HCB’s branch locations did not inconvenience LMI populations in the bank’s combined assessment area. However, examiners assigned the bank a Service Test rating of “Needs to Improve,” citing the need to improve the percentage of the bank’s branch locations in LMI geographies and the need for greater involvement by the bank’s officers in community development activities.

HCB’s Mortgage Lending Practices and M&T’s Plans for the Combined Organization. On September 24, 2015, the DOJ, the CFPB, and HCB announced a proposed Consent Order to resolve the agencies’ claims that HCB has engaged in redlining of majority Black and Hispanic neighborhoods in HCB’s three primary assessment areas⁶⁰ and thereby denied an equal opportunity to, and discouraged the residents of these neighborhoods to, obtain

⁵⁸ The HCB Evaluation was conducted using Large Savings Association CRA Examination Procedures. Examiners analyzed HMDA-reportable mortgage loans originated and purchased from January 1, 2008, through December 31, 2010, for most factors under the Lending Test. Examiners considered community development loans originated from April 2, 2008, through March 14, 2011.

⁵⁹ The HCB Evaluation included a full-scope review of three assessment areas: the New York–Newark–Bridgeport, New York–New Jersey–Connecticut–Pennsylvania, Combined Statistical Area; the Burlington County, New Jersey, assessment area; and the Suffolk County, New York, assessment area. A limited-scope review was performed in the Camden County, New Jersey, assessment area and the Gloucester County, New Jersey, assessment area.

⁶⁰ These areas are the New York City, Bridgeport, and Philadelphia MSAs.

mortgage loans on account of the racial composition of those neighborhoods.⁶¹ HCB agreed to a program to ensure that it provides credit on an equal and nondiscriminatory basis throughout its assessment areas, including by, among other things, taking all reasonable, practicable actions, consistent with safe and sound operation, to increase lending, open two new branches, provide subsidized loan offerings, and expand outreach and education efforts in the identified minority neighborhoods and census tracts. HCB also agreed to ensure that it makes credit available in minority neighborhoods and census tracts in the three assessment areas on no less favorable a basis than it does in nonminority neighborhoods and census tracts, and not to otherwise engage in discrimination prohibited by the Equal Credit Opportunity Act⁶² or the Fair Housing Act.⁶³

M&T has agreed to address the weaknesses at HCB and contends that M&T's record of providing banking services in the areas served by HCB demonstrates M&T's ability to implement these improvements effectively. M&T notes that M&T Bank already operates in the assessment areas identified in the HCB Consent Order and has continuously received the highest available CRA rating since 1989. M&T Bank will expand the CRA activities of the combined bank to be commensurate with its expanded size and geographic scope. For example, following consummation, the CRA lending, investment, and service programs of M&T Bank would be applied to the operations and activities of HCB in the communities it serves.

The integration of HCB into M&T Bank will expand the CRA assessment areas for the combined bank. For example, in New York, although HCB currently operates primarily in Staten Island and Westchester County, the combined bank would serve all five boroughs of New York City. As a result, the combined bank would serve a broader and more diversified geographic area than either M&T Bank or HCB on a standalone basis. Upon consummation of the proposal and the merger of HCB into M&T Bank, M&T will assume the obligations of HCB, including HCB's obligations under the Consent Order to open two new branches in majority-minority census tracts within HCB's current assessment areas.

Moreover, M&T has stated that it will expand the products and services that HCB offers in HCB's current assessment areas to include the products and services provided by M&T Bank, and it will implement the CRA program developed by M&T Bank at the offices of HCB.⁶⁴ In particular, M&T plans for the combined bank to continue to offer innovative and flexible loan products throughout its assessment areas. For example, M&T would offer its version of the FHA Community Mortgage throughout the expanded geographic area served by the combined bank. Similarly, the combined bank will continue to offer M&T Bank's suite of government-backed mortgage products, such as FHA loans and loans backed by the State of New York Mortgage Agency. These products include features such as below-market rates, less cash required out-of-pocket from borrowers, lender credits that can be used for closing-cost assistance, and reduced down payment and reserve requirements.

The combined organization is expected to continue M&T Bank's current approach to promoting these affordable mortgage products. M&T notes that M&T Bank focuses its

⁶¹ Press Release, Consumer Financial Protection Bureau (September 24, 2015), available at www.consumerfinance.gov/newsroom/cfpb-and-doj-order-hudson-city-savings-bank-to-pay-27-million-to-increase-mortgage-credit-access-in-communities-illegally-redlined/; Press Release, Department of Justice (September 24, 2015), available at www.justice.gov/opa/pr/justice-department-and-consumer-financial-protection-bureau-reach-settlement-hudson-city.

⁶² 15 U.S.C. § 1691 *et seq.*

⁶³ 42 U.S.C. § 3601 *et seq.*

⁶⁴ These communities include communities in New Jersey, where according to one commenter, HCB generally has a poor CRA performance record.

advertising for such affordable mortgage loan products in newspapers that are targeted to reach minority and/or LMI residents and in community-based newsletters that serve those residents. M&T Bank also promotes its affordable mortgage products through referrals, loan officer interactions with customers, and participation with nonprofit housing counselors and community reinvestment organizations. M&T states that it has found that participation with such organizations in community events, such as housing fairs, seminars, and similar events, is an effective means to promote the features and benefits of its affordable mortgage loan products.

M&T also plans to continue to provide community sponsorships that benefit LMI and minority neighborhoods. M&T's existing community sponsorships include, for example, financial support for organizations like the Westminster Community Charter School, an elementary school that serves LMI and minority neighborhoods in Buffalo, New York.

Following consummation of the proposal, the Board expects that M&T will cooperate fully with the DOJ and the CFPB and that M&T will ensure that the combined organization commits the appropriate resources to integrate the operations of HCB into those of M&T Bank and fulfill all outstanding obligations of HCB under applicable law and the Consent Order.

C. Public Benefits of the Proposals

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. Commenters allege that these proposals would not provide a clear or significant public benefit.⁶⁵

In this regard, M&T represents that the proposals would provide existing customers of HCB with access to an expanded branch and ATM network and would offer additional products and services to HCB's customers that are not currently offered by HCB, including products and services to benefit LMI individuals and communities in HCB's New Jersey and Connecticut markets.⁶⁶ For example, HCB customers would have access to M&T's deposit, lending, investment, wealth advisory, and institutional client services, as well as a suite of commercial loan and deposit products. HCB's retail customers would benefit from M&T Bank's offering of consumer loans and mortgages, including various conventional mortgage products; FHA and VA mortgages, including renovation loans under section 203(k) of the National Housing Act;⁶⁷ and a variety of CRA products focused on the needs of LMI borrowers.

⁶⁵ In addition, a commenter expressed concerns that M&T Bank would close branches in New York and thereby decrease access to banking services in LMI neighborhoods. M&T does not currently have any plans to close any HCB or M&T Bank branches upon an acquisition of HCB and is still evaluating potential branch consolidation opportunities. M&T Bank has identified three potential consolidation opportunities where M&T Bank branches are in close proximity to HCB branches and where the characteristics of the respective branches—i.e., the floor plans, customer servicing elements (e.g., drive-up, teller lines), branch condition, and location—might support a consolidation decision.

In this regard, M&T Bank's branch closing record will continue to be reviewed by Reserve Bank examiners in the course of conducting CRA performance evaluations. Moreover, federal law requires an insured depository institution to provide notice to the public and to the appropriate federal banking agency before closing a branch. Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Federal Register* 34844 (June 29, 1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal banking agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

⁶⁶ Commenters expressed concerns that M&T would not introduce new products and services to the customers of Hudson City, especially to its LMI customers.

⁶⁷ 12 U.S.C. § 1709(k).

In addition, following the merger of HCB with M&T Bank, the CRA programs of M&T Bank would be applied to the operations and activities of HCB. M&T notes that M&T Bank's CRA program has been applied to the operations and activities of other banks that have been merged into M&T Bank, and M&T Bank has maintained an "Outstanding" CRA performance record in each CRA public evaluation following these actions. In light of this record, M&T argues that the proposals would produce CRA benefits through increased CRA activities and improved CRA performance in the communities HCB serves.

D. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, consultations with the OCC and the CFPB, confidential supervisory information, information provided by M&T, and the public comments on the proposals. Based on that review, the Board concludes that the proposals would result in public benefits that would outweigh the potential adverse effects and that the convenience and needs factor is consistent with approval.

These proposals represent a significant expansion by M&T. As noted above, the Board expects M&T to complete its efforts to implement effective consumer compliance and management programs across the entire enterprise and expects that M&T will implement a consumer compliance program that is commensurate with the size and complexity of the combined organization.

Financial Stability

The Dodd-Frank Act added "risk to the stability of the United States banking or financial system" to the list of possible adverse effects that the Board must weigh against any expected public benefits in considering a proposal under section 4(j) of the BHC Act, and as a factor that must be considered under the Bank Merger Act.⁶⁸

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 merged 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.⁶⁹ 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.⁷⁰

⁶⁸ Dodd-Frank Act §§ 604(e)(1) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601–02(2010), amending 12 U.S.C. §§ 1843(j)(2)(A) and 1828(c)(5).

⁶⁹ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

⁷⁰ For further discussion of the financial stability standard, see *Capital One Order*.

In this case, the Board has considered information relevant to the risks to the stability of the U.S. banking or financial system, including public comments on the proposals.⁷¹ Both the acquirer and the target are predominantly engaged in retail financial activities.⁷² The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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

Additional Public Benefits of the Proposals

As noted, in connection with a notice under section 4(c)(8) of the BHC Act, section 4(j) of the BHC Act requires the Board to “consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system.”⁷³ As noted, commenters asserted that the proposed transactions would not provide a clear or significant public benefit. As discussed above, the Board has considered that the proposed transactions would provide greater services, product offerings, and geographic scope to customers of Hudson City. In addition, the acquisitions would ensure continuity and strength of service to customers of Hudson City.

The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y, Board precedent, and this Order is not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system. On the basis of the entire record, including conditions noted in this Order, and for the reasons discussed above, the Board believes that the balance of benefits and potential adverse effects related to competition, financial and managerial resources, convenience and needs, financial stability, and other factors weigh in favor of approval of these proposals. Accordingly, the Board determines that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

⁷¹ A commenter generally alleges that M&T seeks to become “too big to fail.”

⁷² M&T accepts retail deposits and engages in mortgage lending, mortgage and credit card servicing, commercial real estate financing, small business lending, credit card and other consumer lending, wealth management, institutional client services, and securities brokerage services. Hudson City offers savings accounts, certificates of deposit, and residential mortgage loans. In each of its activities, M&T has, and as a result of the proposals would continue to have, a small share on a nationwide basis, and numerous competitors would remain.

⁷³ 12 U.S.C. § 1843(j)(2)(A).

Establishment of Branches

As noted, M&T Bank has applied under section 9 of the FRA to establish branches at the current locations of HCB.⁷⁴ The Board has assessed the factors it is required to consider when reviewing an application under that section.⁷⁵ 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 proposals should be, and hereby are, approved.⁷⁶ 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. Approval of these proposals is specifically conditioned on compliance by M&T with all commitments made in connection with these proposals and the conditions set forth in this Order. The commitments and conditions are deemed to be conditions imposed in writing by the Board in connections with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transactions 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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective September 30, 2015.

⁷⁴ Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. Thus, state member banks may establish branches at locations acquired through acquisition if the branches are located in states in which the state member bank had a presence prior to the acquisition. *See* sections 5455(c)(2) and (e) of the Revised Statutes of the United States, 12 U.S.C. § 36(c)(2) and (e). In addition, section 341 of the Dodd-Frank Act provides authority for savings associations that become banks to continue to operate branches that they operated immediately before becoming banks. Dodd-Frank Act § 341, Pub. L. No. 111-203, 124 Stat. 1376, 1540–41 (2010), codified at 12 U.S.C. § 5451.

⁷⁵ 12 U.S.C. §§ 321 and 322; 12 CFR 208.6. Specifically, the Board has considered M&T Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, and CRA performance. In addition, upon consummation of the proposals, M&T Bank's investments in bank premises would remain within the legal requirements under 12 CFR 208.21.

⁷⁶ Several commenters requested that the Board hold public hearings or meetings on the proposals. The Board's regulations provide for a formal public hearing or informal public meeting on a notice filed under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). 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 commenters' requests in light of all the facts of record. In the Board's view, commenters have had ample opportunity to submit comments on the proposals and, in fact, submitted written comments that the Board has considered in acting on the proposals. The commenters' requests do not identify disputed issues of fact that are material to the Board's decision that would be clarified by a public hearing or meeting. In addition, the requests do not demonstrate why the written comments do not present the commenters' views adequately or why a meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the requests for a public hearing or meeting on the proposals are denied.

In addition, a commenter requested a further extension of the comment period for the proposals. The Board's Rules of Procedure contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. 12 CFR 262.25(b)(2). The commenter's requests for additional time do not identify circumstances that would warrant an extension of the public comment period for these proposals. Accordingly, the Board has determined not to extend further the public comment period.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

Connecticut Branches to Be Established

1. 100 East Putnam Avenue, Cos Cob, Connecticut
2. 599 Newfield Avenue, Stamford, Connecticut
3. 2 Prospect Street, Ridgefield, Connecticut
4. 837 Post Road, Fairfield, Connecticut
5. 146 Greenwood Avenue, Bethel, Connecticut
6. 247 Federal Road, Brookfield, Connecticut
7. 525 Main Street, Monroe, Connecticut
8. 547 Boston Post Road, Darien, Connecticut
9. 596 Westport Avenue, Norwalk, Connecticut

New Jersey Branches to Be Established

1. West 80 Century Road, Paramus, New Jersey
2. 532 Ocean Avenue, Jersey City, New Jersey
3. 2530 Kennedy Boulevard, Jersey City, New Jersey
4. 7533 Bergenline Avenue, North Bergen, New Jersey
5. 7 East Prospect Street, Waldwick, New Jersey
6. 249 Kinderkamack Road, Oradell, New Jersey
7. 495 Manila Avenue, Jersey City, New Jersey
8. 790 Queen Anne Road, Teaneck, New Jersey
9. 897 Prospect Street, Glen Rock, New Jersey
10. 684 Anderson Avenue, Cliffside Park, New Jersey
11. 304 Essex Street, Lodi, New Jersey
12. 330 Kinderkamack Road, Emerson, New Jersey
13. 731 Brick Boulevard, Brick, New Jersey
14. 887 Allwood Road, Clifton, New Jersey
15. 119 Central Avenue, Westfield, New Jersey
16. 80 Union Avenue #86, Cresskill, New Jersey
17. 62-64 Main Street, Millburn, New Jersey
18. 767 Bloomfield Avenue, West Caldwell, New Jersey
19. 114-116 Kings Highway East, Haddonfield, New Jersey
20. 365 Tucker Avenue, Union, New Jersey
21. 167 East Kennedy Boulevard #169, Lakewood, New Jersey
22. 2335 Church Road, Cherry Hill, New Jersey
23. 379 Ramapo Valley Road, Oakland, New Jersey
24. 57 West Main Street, Ramsey, New Jersey
25. 94 North Maple Avenue, Ridgewood, New Jersey
26. 1070 Main Street, River Edge, New Jersey
27. 1002 Mantua Pike, Woodbury Heights, New Jersey
28. 303 Main Street and Center Avenue, Fort Lee, New Jersey
29. 351 West Main Street, Freehold, New Jersey
30. One Paddock Plaza, West Long Branch, New Jersey
31. 587 Summit Avenue, Jersey City, New Jersey
32. 715 River Road, New Milford, New Jersey
33. 341 Springfield Avenue, Summit, New Jersey
34. 1406 Route 130, Cinnaminson, New Jersey

35. 632 Westwood Avenue, River Vale, New Jersey
36. 128 Center Grove Road, Randolph, New Jersey
37. 45 Outwater Lane, Garfield, New Jersey
38. 10 West Main Street, Denville, New Jersey
39. 355 Applegarth Road, Monroe, New Jersey
40. 216 Passaic Avenue, Kearny, New Jersey
41. 782 Lacey Road, Forked River, New Jersey
42. 35a Marshall Hill Road, West Milford, New Jersey
43. 157 Seventh Avenue, Newark, New Jersey
44. 72 Mt Vernon Place, Newark, New Jersey
45. 187 Eagle Rock Avenue, Roseland, New Jersey
46. 641 Shunpike Road, Chatham, New Jersey
47. 18 James Street, Florham Park, New Jersey
48. 977 Valley Road, Gillette, New Jersey
49. 90 Barclay Center, Route 70, Cherry Hill, New Jersey
50. 55 Brick Boulevard, Brick, New Jersey
51. 2100 Route 70, Manchester, New Jersey
52. 209 Route 206 South, Chester, New Jersey
53. 75 Route 35, Middleton, New Jersey
54. 232 South Livingston Avenue, Livingston, New Jersey
55. 313 Henry Street, Orange, New Jersey
56. 150 Newark Pompton Turnpike, Pequannock, New Jersey
57. 200 Grand Avenue, Hackettstown, New Jersey
58. 261 Godwin Avenue, Wyckoff, New Jersey
59. 340 Main Street, Madison, New Jersey
60. 577 Lakehurst Road, Toms River, New Jersey
61. 288 Main Street, Orange, New Jersey
62. 1965 State Route 57, Hackettstown, New Jersey
63. 50 East Palisade Avenue, Englewood, New Jersey
64. 60 Park Place, Newark, New Jersey
65. 1328 River Avenue, Lakewood, New Jersey
66. 217 Berdan Avenue, Wayne, New Jersey
67. 335 Atlantic City Boulevard, Bayville, New Jersey
68. 240 Baldwin Road, Parsippany, New Jersey
69. 1000 Route 70, Lakewood, New Jersey
70. 277 Eisenhower Parkway, Livingston, New Jersey
71. 408 East Madison Avenue, Dumont, New Jersey
72. 89 Interstate Shopping Center, Ramsey, New Jersey
73. 455 County Road, Marlboro, New Jersey
74. 1018 Washington Street, Hoboken, New Jersey
75. 115 Franklin Turnpike, Mahwah, New Jersey
76. 580 North Main St., Barnegat, New Jersey
77. 601 Route 72 East, Manahawkin, New Jersey
78. 45 South New York Road, Galloway, New Jersey
79. 435 Lewandowski Street, Lyndhurst, New Jersey
80. 108 Lacey Road, Whiting, New Jersey
81. 85 Godwin Avenue, Midland Park, New Jersey
82. 547 Broadway, Bayonne, New Jersey
83. 3495 U.S. Highway 1, Suite 2, Princeton, New Jersey
84. 370 Route 130, East Windsor, New Jersey
85. 2407 State Route 71, Spring Lake, New Jersey
86. 523 Shoppes Boulevard, North Brunswick, New Jersey
87. 1168 Highway 34, Aberdeen, New Jersey
88. 416 South Main Street, Forked River, New Jersey

89. 1620 Route 23 North, Wayne, New Jersey
90. 210 Enterprise Drive, Rockaway, New Jersey
91. 51 Route 22 East, Green Brook, New Jersey
92. 3562 Route 27, Princeton, New Jersey
93. 3897 Route 9, Old Bridge, New Jersey
94. 166 State Route 31, Flemington, New Jersey
95. 779 Franklin Avenue, Franklin Lakes, New Jersey
96. 3 Tree Farm Road, Pennington, New Jersey
97. 889 Fischer Boulevard, Toms River, New Jersey

New York Branches to Be Established

1. 53345 Main Road, Southold, New York
2. 18 East Montauk Highway, Hampton Bays, New York
3. 1591 Richmond Road, Staten Island, New York
4. 2220 Forest Avenue, Staten Island, New York
5. 25 Hill Street, Southampton, New York
6. 1430 Old Country Road, Riverhead, New York
7. 2212 Hylan Boulevard, Staten Island, New York
8. 133 Main Street, Westhampton Beach, New York
9. 320 Mamaroneck Avenue, White Plains, New York
10. 389 Halstead Avenue, Harrison, New York
11. 115 South Ridge Street, Port Chester, New York
12. 228 South Main Street, New City, New York
13. 1019 Park Street, Peekskill, New York
14. 1961 Commerce Street, Yorktown Heights, New York
15. 3031 East Main Street, Mohegan Lake, New York
16. 88 Fourth Street, New Rochelle, New York
17. 302 Somers Commons, Baldwin Place, New York
18. 4106 Hylan Boulevard, Staten Island, New York
19. 248 Main Street, Center Moriches, New York
20. 301 Route 25a, Miller Place, New York
21. 2040 Boston Post Road, Larchmont, New York
22. 74825 Main Road, Greenport, New York
23. 126 North Main Street, East Hampton, New York
24. 300 Mamaroneck Avenue, Mamaroneck, New York
25. 190 Gleneida Avenue, Carmel, New York
26. 2935 Veterans Road West, Suite F, Staten Island, New York
27. 903 Montauk Highway, Bayport, New York
28. 1320 Stony Brook Road, Suite 140, Stony Brook, New York
29. 2102 Montauk Highway, Bridgehampton, New York

Order Issued Under Sections 3 and 4 of the Bank Holding Company Act

PacWest Bancorp

Los Angeles, California

Order Approving the Merger of Bank Holding Companies and Acquisition of Nonbanking Subsidiaries

FRB Order No. 2015-26 (September 21, 2015)

PacWest Bancorp (“PacWest”), Los Angeles, California, has requested the Board’s approval under section 3 of the Bank Holding Company Act of 1956, as amended (“BHC

Act”),¹ to merge with Square 1 Financial, Inc., and thereby acquire its subsidiary bank, Square 1 Bank, both of Durham, North Carolina. Immediately following the proposed merger, Square 1 Bank would be merged into PacWest’s subsidiary bank, Pacific Western Bank (“PWB”), Los Angeles, California.² PacWest has also requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board’s Regulation Y to acquire nonbanking subsidiaries of Square 1 Financial that are engaged in financial and investment advisory activities.³

Notice of the proposals, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (80 *Federal Register* 18404 (April 6, 2015); 80 *Federal Register* 22189 (April 21, 2015)).⁴ The time for submitting comments has expired, and the Board has considered the proposals and all comments received in light of the factors set forth in the BHC Act.

PacWest, with consolidated assets of approximately \$16.7 billion, is the 84th largest depository organization in the United States.⁵ PacWest controls PWB, which operates branches only in California. PWB is the 14th largest insured depository institution in California, controlling approximately \$12.0 billion in deposits, which represent 1.1 percent of the total deposits of insured depository institutions in California.⁶

Square 1 Financial, with consolidated assets of approximately \$3.9 billion, is the 265th largest depository organization in the United States. Square 1 Financial controls Square 1 Bank, which operates one branch located in Durham, North Carolina. Square 1 Bank is the 9th largest insured depository institution in North Carolina with approximately \$2.4 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Upon consummation, PacWest would become the 76th largest depository organization in the United States, with consolidated assets of approximately \$21.3 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. PacWest would control approximately \$14.4 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.

Because this transaction involves the acquisition by a bank holding company of a bank and nonbank companies, the Board has reviewed the transaction under both section 3 and section 4 of the BHC Act. Section 3 governs the acquisition of a bank; section 4 establishes the standards governing the acquisition of nonbank companies.

Interstate and Deposit Cap Analyses

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank in a state other than the home state of the bank holding company without regard to

¹ 12 U.S.C. § 1842.

² The merger of Square 1 Bank into PWB 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 bank merger on August 24, 2015.

³ 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.

⁴ 12 CFR 262.3(b).

⁵ Asset data are as of June 30, 2015, and nationwide asset-ranking data are as of March 31, 2015, unless otherwise noted.

⁶ 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.

whether the transaction is prohibited under state law.⁷ 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.⁸ 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.⁹

For purposes of the BHC Act, the home state of PacWest is California, and the home state of Square 1 Financial is North Carolina.¹⁰ PacWest is well capitalized and well managed under applicable law, and PWB has a "Satisfactory" Community Reinvestment Act ("CRA") rating.¹¹ In this case, North Carolina's statute would require the application of California's five year minimum age requirement, and Square 1 Bank has been in existence for more than five years.¹²

On consummation of the proposals, PacWest would control less than 1 percent of the total amount of deposits in insured depository institutions in the United States. In addition, the combined organization would control \$12.0 billion (or approximately 1.1 percent) and \$2.4 billion (or approximately 0.7 percent) of the total amount of deposits of insured depository institutions in California and North Carolina, respectively, which are the two states in which the combined organization would have banking operations upon consummation of the proposal. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.¹³

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

⁷ 12 U.S.C. § 1842(d)(1)(A).

⁸ 12 U.S.C. § 1842(d)(1)(B).

⁹ 12 U.S.C. § 1842(d)(2)(A) and (B).

¹⁰ 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 by which the bank is chartered. 12 U.S.C. § 1841(o)(4).

¹¹ 12 U.S.C. § 2901-2908.

¹² North Carolina law applies to an out-of-state bank or holding company the requirements or limitations that would be imposed by such bank's or holding company's home state on an acquisition made by a North Carolina bank or holding company in the other state. *See* N.C. Gen. Stat. §53-211(a). In turn, California, PacWest's home state, provides that "[n]o foreign (other state) bank that does not already maintain a California branch office may . . . [m]erge as the surviving bank with a California bank . . . unless the California bank has been in existence for at least five years." Cal. Fin. Code § 1685. Consequently, a five year minimum age requirement applies in this case.

¹³ One commenter argued that the merger may result in violation of section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (the "Riegle-Neal Act"), which generally prohibits a bank from establishing or acquiring a branch outside its home state for the purpose of deposit production. The Board notes that the loan-to-deposit ratio test established under section 109 of the Riegle-Neal Act is not applicable until one year after establishment or acquisition of an interstate branch and therefore would not be applied to PWB until one year after consummation. Furthermore, if the loan-to-deposit ratio test established under section 109 is not satisfied by PWB one year after consummation, PWB would not violate section 109 unless it is also found by the FDIC not to be reasonably helping to meet the credit needs of the communities served, including through the FDIC's evaluation of the bank's performance record under the CRA, which is currently deemed to be "Satisfactory." *See* 12 U.S.C. § 1835a.

the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁴ In addition, under section 4 of the BHC Act, the Board must consider the competitive effects of a proposal to acquire a nonbank company under the balancing test of section 4(j) of the BHC Act.¹⁵

PWB and Square 1 Bank do not compete directly in any banking market. The Department of Justice has advised the Board that consummation of the transaction would not be likely to have a significantly adverse effect on competition in any relevant 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 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 parent-only and consolidated bases, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the applicant to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of the financial and managerial resources and the proposed business plan.

PacWest and PWB are both well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger that is structured as an exchange of shares.¹⁶ The asset quality, earnings, and liquidity of PWB and Square 1 Bank are consistent with approval, and PacWest appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations.¹⁷ In addition, future prospects are considered consistent with approval.

¹⁴ 12 U.S.C. § 1842(c)(1).

¹⁵ 12 U.S.C. § 1843(j)(2)(A).

¹⁶ As proposed, Square 1 Financial would be merged into PacWest and shares of Square 1 Financial would be converted into a right to receive shares of PacWest common stock, based on an exchange ratio. Additionally, outstanding options, warrants, and unvested restricted stock of Square 1 Financial would be cancelled in exchange for cash. PacWest has the financial resources to fund the acquisition.

¹⁷ One commenter expressed concern about the safety and soundness of PacWest, arguing that the company has a high loan-to-deposit ratio, poor asset quality, and heavy cost structure. The Board has considered this comment as well as the financial resources of the combined organization, including asset quality and other measures of financial ability.

This commenter also noted that PacWest had its credit ratings by Fitch Ratings withdrawn in April 2015. PacWest does not have any outstanding debt, is not issuing any debt, and has no plans to issue debt. As a result, PacWest asked Fitch not to provide a rating to the company, and PacWest did not renew its contract with Fitch. In addition, in announcing the withdrawal of PacWest's rating, Fitch affirmed the rating and assigned PacWest a stable outlook.

Based on its review of the record, the Board finds that PacWest 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 PacWest, Square 1 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 PacWest, the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

PacWest, Square 1 Financial, and their subsidiary depository institutions are each considered to be well managed. PacWest's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of PacWest have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered PacWest's plans for implementing the proposal. PacWest is devoting significant resources to address all aspects of the post-acquisition integration process for these proposals. PacWest has a demonstrated record of successfully integrating organizations into its operations and risk-management systems following acquisitions. Since 2000, PacWest has acquired and successfully integrated into its operations more than 20 banking organizations. As part of its integration process, PacWest conducts a comprehensive review of the target's activities and the compliance, policies, procedures, and internal monitoring associated with these activities. Where appropriate, new elements are introduced and incorporated into PacWest's policies and processes to ensure they are effective for the combined organization. As a result of this integration process in connection with its 2014 acquisition of Capital Source Inc., PacWest overhauled and significantly improved its risk management framework to address the new activities and risk profile that resulted from the transaction. PacWest has also improved the depth and experience of its management through prior acquisitions by retaining management from acquisition targets. PacWest plans to follow this process in integrating Square 1 Bank.

PacWest would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, PacWest's and Square 1 Financial's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and PacWest plans to integrate Square 1 Financial's existing management and personnel in a manner that augments PacWest's and PWB's management.¹⁸

Based on all the facts of record, including PacWest'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 PacWest and Square 1 Financial in combatting money-laundering activities, are consistent with approval.

¹⁸ After consummation, the chief executive officer and president of Square 1 Bank will become the president of the Square 1 division of PWB, and one current director of Square 1 Financial will be appointed to the board of directors of PacWest.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served. 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 CRA.¹⁹ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²⁰ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods.²¹

In addition, the Board considers the banks' overall compliance record and recent fair lending examinations. Fair lending laws require all lending institutions to provide loan applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics.

The Board also considers the supervisory assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans following consummation, and any other information the Board deems relevant.

The Board consulted with the FDIC concerning its evaluation of the CRA performance of PWB and Square 1 Bank, PWB's compliance with fair lending and consumer protection laws and regulations, and the comments received on the proposal. The FDIC considered the comments opposing the proposal, including allegations against PWB and Square 1 Bank, as part of the FDIC's review of the proposed merger of the two banks and has approved the bank merger.

A. Public Comments Regarding the Proposal

In this case, the Board received 17 comments from 13 commenters objecting to the proposal on the basis of PWB's CRA performance record and plans for meeting the credit needs of the communities served by the combined organization. Of the 13 opposing commenters, 10 commenters, led by a California based community group, submitted substantially identical comments raising identical issues and concerns.²² These commenters raised issues and concerns about PacWest and its CRA activities similar to those raised in connection with the application for Board approval of PacWest's 2014 acquisition of Capital Source Inc., which was granted by the Board.²³

Commenters argued that only 42 percent of the bank's business loans were made to businesses with less than \$1 million in annual revenues in 2014, and that the bank should

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

²⁰ 12 U.S.C. § 2901(b).

²¹ 12 U.S.C. § 2903.

²² One commenter, Reinvestment Partners, also submitted a petition in opposition to the proposal, with the names of approximately 158 individuals.

²³ See PacWest Bancorp, FRB Order No. 2014-3 (April 1, 2014). As noted below, PWB's CRA performance record has been evaluated by the FDIC since the Capital Source acquisition and has improved significantly.

extend at least 50 percent of its business loans to those businesses annually.²⁴ Commenters also argued that PacWest has not made sufficient reinvestments, including through small business lending, in rural areas and that the company has a history of closing branches in rural areas.²⁵ In addition, commenters argued that Square 1 Bank has a stronger CRA performance record than PacWest and the proposal will dilute Square 1 Bank's CRA performance because deposits collected by Square 1 Bank in North Carolina may be reinvested in PacWest's assessment areas outside that state. It was also argued that the proposal would not provide a public benefit to the affected communities. These commenters urged that approval of PacWest's proposal be conditioned on the submission of a stronger, multi-year CRA plan that is made available publicly, including on PacWest's website.

PWB's and Square 1 Bank's Businesses and PacWest's Responses to Comments. PWB focuses on serving small- to medium-sized businesses through a broad range of banking products and services, including deposit products, money market accounts, commercial loans, real estate construction loans, and SBA-guaranteed loans. A substantial majority of PWB's loans are originated within its local communities to business customers of different revenue sizes. PWB has 81 branches located throughout California.

Square 1 Bank primarily serves venture capital and private equity firms and their portfolio companies by providing deposit products, term commercial revolving lines of credit, asset-based loans, credit cards, foreign exchange, cash management, and letters of credit. Square 1 Bank also has a recently formed asset management subsidiary that provides investment advisory services to clients of Square 1 Bank. Square 1 Bank operates one branch in Durham, North Carolina.

PacWest contends that PWB's loans to businesses with annual revenues of \$1 million or less grew from approximately 34 percent of its small business loans in 2012 to 42 percent of

²⁴ Commenters also expressed concern about: (i) PacWest's decision to develop two new small business products rather than participate in California's state loan guarantee program as suggested by commenters; (ii) PacWest's failure to commit at least \$50,000 per year to technical assistance for small businesses; (iii) the absence of a formalized program under which PacWest would refer to community lenders at least 20 percent of the small business loan applicants declined by PacWest; (iv) PacWest's failure to develop a bank account with features suggested by one commenter; (v) PacWest's failure to commit at least 50 percent of its charitable contributions to housing and economic development; (vi) the level of charitable and philanthropic activity by Square 1 Bank; (vii) the concentration of PacWest community development lending and investments in tax credits and non-equity equivalent investments; and (viii) the concentration of Square 1 Bank CRA lending and investments in CRA-qualifying mortgage backed securities.

Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available on certain terms or at certain rates, the CRA neither requires an institution to provide any specific types of products or services nor authorizes the federal banking agencies to direct a bank's community development investment or lending activities to specific groups, individuals, projects, or types of investments such as those recommended by commenters. Moreover, neither the CRA nor the agencies' implementing rules require that institutions engage in a specific activity such as charitable giving in order to meet community credit needs of the communities the institutions serve. As explained below, the Board has considered whether the products PacWest and Square 1 Financial have chosen to provide help meet the credit needs of the entire community, including LMI areas.

Commenters also raised concerns that PacWest does not have a vendor program that targets contracting opportunities to minority, women and disabled-owned businesses and that PacWest has received payments from the FDIC pursuant to the company's loss-share agreement with the agency. The Board believes that these contentions and concerns are outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. See *CIT Group, Inc.*, FRB Order No. 2015-20, n. 71 (2015); *Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217, 223 n.31 (2004). See also *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973) ("*Western Bancshares*").

²⁵ Commenters also argued that PacWest's CRA plan for PWB is weak and deceptive because, although it commits that PWB's CRA activities will represent a certain percentage of core deposits, the CRA plan defines "core deposits" to exclude roughly 50 percent of the bank's deposits. The result, in commenters' views, is that PacWest's CRA plan overstates the level of CRA activities as a percentage of deposits. Neither the CRA nor the federal banking agencies' implementing rules require that an institution's CRA activities represent a specific percentage of its deposits. Rather, an institution's CRA performance is measured by performance tests and standards outlined in the federal banking agencies' CRA regulations. See 12 CFR 228.21 *et seq.*

its small business loans in 2014 and that PWB has a goal of extending 50 percent of its small business loans to businesses with \$1 million or less in annual revenues, as suggested by commenters. The steady growth in small business lending experienced by PWB reflects, in PacWest's view, the organization's strong commitment to small businesses. PacWest is also expanding the transaction account and small business lending products available to customers of its four recently acquired branches in the rural areas of California's Central Valley. PacWest also highlights the FDIC's most recent CRA evaluation of PWB and notes that FDIC examiners concluded that the bank's record of opening and closing branches had not adversely affected the accessibility of its delivery systems.

PacWest also argues that it is preparing to meet the credit needs of the communities it will enter as a result of this transaction. PacWest has engaged organizations in North Carolina communities to determine the credit needs of those communities and how those needs can be met by the combined organization. As a result of this outreach, PacWest plans to offer, for example, two types of small business loans not currently available from Square 1 Bank for businesses in its communities with gross annual revenues of \$1 million or less.

PacWest notes that it has developed one-year CRA plans rather than multi-year plans because a one-year plan allows the company to be flexible and adaptive as it executes its strategy. PacWest contends that, the length of its CRA plan notwithstanding, it is committed to increasing the dollar amount of PWB's CRA activities by at least 10 percent over the previous year's results if PWB has positive net income at each year end. PacWest states that in no case would the dollar amount of PWB's overall commitment be less than the previous year's commitment.

B. Records of Performance under the CRA

As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance in light of examinations and other supervisory information as well as information and views provided by the appropriate federal supervisors.²⁶

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.²⁷ 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

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

²⁷ 12 U.S.C. § 2906.

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 of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;²⁸ 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 PWB. PWB was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of October 27, 2014 (“PWB Evaluation”).²⁹ PWB received a “High Satisfactory” rating on the Lending Test and the Investment Test and an “Outstanding” rating on the Service Test. These ratings reflect significant improvements in the bank's CRA performance record since its previous CRA public evaluation, dated October 2010. In particular, PWB's ratings on the Lending Test and the Investment Test improved from “Low Satisfactory” to “High Satisfactory,” and its rating on the Service Test improved from “Low Satisfactory” to “Outstanding.”

Examiners found that PWB's responsiveness to the credit needs of its assessment areas was good. Examiners noted that a substantial majority of the bank's loans were originated within the bank's assessment areas and the distribution of borrowers reflected adequate penetration among business customers of different revenue sizes, given the bank's primary lending focus on small- and medium- sized businesses. Examiners also noted that the geographic distribution of loans reflected good penetration throughout the assessment areas. PWB also exhibited adequate penetration among business customers of different revenue sizes, and PWB's origination of small business loans to businesses with annual revenue under \$1 million was similar to or better than peer banks serving the same assessment areas. FDIC examiners also noted that while PWB made limited use of innovative and/or flexible lending practices, the bank made a relatively high level of community development loans and had a record of serving the credit needs of the most economically disadvantaged areas, low-income individuals, and/or very small businesses. Moreover, examiners found that the relatively high level of community development loans made by PWB addressed affordable housing, community services, economic development, and revitalization aspects of community development lending.

Examiners found that PWB had a significant level of qualified community development investments and grants, and particularly those that are not routinely provided by private investors. Examiners found that PWB was a leader for community development invest-

²⁸ 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).

²⁹ The PWB Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners evaluated 2012 and 2013 CRA small business loan data collected and reported and 2014 CRA small business loan data collected through June 30, 2014. The evaluation period for community development loans, innovative/flexible components of the Lending Test, community development investments, and services was October 18, 2010, through October 27, 2014. Full-scope evaluation procedures were performed for the bank's Los Angeles and San Diego assessment areas. Limited scope evaluation procedures were performed for the bank's San Luis Obispo, Santa Barbara, San Francisco, Fresno, Kern, and Kings-Tulare assessment areas.

ments and grants. Examiners also found that PWB's performance exhibited good responsiveness to credit and community economic development needs based on the opportunities for such investments in its assessment areas. Examiners noted that PWB made significant use of innovative and/or complex investments to support community development initiatives. Examiners also noted that an overwhelming majority of PWB's equity investments supported affordable housing.

Examiners found PWB to be a leader in providing community development services and exceeded other regional banks in terms of both the number of organizations served and the number of hours provided. Examiners observed that the bank's delivery systems were accessible to all portions of its assessment areas. Moreover, the bank's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies and/or to LMI individuals.³⁰ Of the 46 branches closed during the review period, 23 were consolidated with existing branches located within close proximity to their previous location, three were relocated, 10 were sold to another financial institution, and 10 were permanently closed. Of the 10 permanently closed, two were in moderate-, four were in middle-, and four were in upper-income census tracts.

CRA Performance of Square 1 Bank. Square 1 Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of October 17, 2013 ("Square 1 Evaluation"). The Square 1 Evaluation was conducted pursuant to an FDIC approved CRA strategic plan, which specified measurable goals for meeting the lending, investment, and service needs of the bank's assessment area.³¹ The Square 1 Evaluation included a full-scope review of the bank's performance toward meeting the strategic plan goals in the defined assessment areas of Wake and Durham Counties, North Carolina, for plan years 2010, 2011, and 2012 under strategic plans approved by the FDIC in December 2008 and December 2011.

Square 1 Bank exceeded all but two of the "Outstanding" strategic plan goals in each area in 2010, 2011, and 2012 combined. Examiners noted that, although Square 1 Bank's 2010 CRA loans and investments and 2012 service hours fell slightly below its "Satisfactory" goals, the bank's performance exceeded, often by significant margins, every other goal for "Outstanding" performance established under its plan. For example, Square 1 Bank's CRA grants were more than three times its goal for "Outstanding" performance in each year, and its 2012 CRA loans and investments exceeded its goal for "Outstanding" by approximately 33 percent.

The FDIC has conducted annual updates on Square 1 Bank's compliance with its CRA Strategic Plan for 2013 and 2014. Examiners concluded that Square 1 Bank exceeded its goal for "Satisfactory" for CRA loans and investments and exceeded its goal for "Out-

³⁰ The FDIC will continue to review PWB's branch closing record in the course of conducting CRA performance evaluations. Moreover, federal law requires an insured depository institution to provide notice to the public and to the appropriate federal banking agency before closing a branch. Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the *Joint Policy Statement Regarding Branch Closings* (64 Fed. Reg. 34,844 (June 29, 1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal banking agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

³¹ The CRA regulations provide that the appropriate federal banking agency will assess a bank's record of meeting the credit needs of its assessment areas under a strategic plan if, among other things, the bank invites public comment on the plan and the plan is approved by such agency. The FDIC approved Square 1 Bank's current strategic plan in December 2011, pursuant to 12 CFR 345.27.

standing” for both CRA grants and CRA service activity in each of the years 2013 and 2014.³²

PWB’s Efforts Since the PWB Evaluation and Plans for the Combined Bank. PacWest has represented that, since the PWB Evaluation was conducted, community reinvestment has remained a focus of the organization’s banking activities. For example, since the time period covered by the PWB Evaluation, PWB has increased the percentage of its small business loans made to businesses with less than \$1 million in gross annual revenues. PacWest represents that marketing efforts during the first and second quarters of 2015 have resulted in improved small business activity in the bank’s rural markets. PacWest also represents that its current level of community development lending is on pace to exceed its performance during the time period covered by the PWB Evaluation and that PWB has significantly increased its investments and donations within its communities. Further, PacWest represents that the bank’s investments and donations through the first six months of 2015 already exceed, by a wide margin, the annualized amount of the bank’s investments and donations during the time period covered by the PWB Evaluation. PacWest also represents that it is on pace for its 2015 community development service hours to exceed its prior year by a substantial amount.

PacWest has also undertaken efforts to identify the credit needs of the communities served by Square 1 Bank through a review of the needs identified by local organizations, Square 1 Bank’s CRA strategic plan, Square 1 Bank’s CRA evaluation and the CRA evaluations of other banks operating in Square 1 Bank’s community, population and demographic data of Durham and Raleigh communities, and periodic publications of the Federal Reserve Bank of Richmond. As part of these efforts, PacWest has engaged in in-person meetings with ten different community groups located in the communities served by Square 1 Bank to assess the needs of Square 1 Bank’s community. Through these diligence efforts, PacWest identified a list of community needs with respect to credit and deposit products and services—e.g., loans to businesses with gross annual revenues of \$1 million or less; loans to finance the creation and preservation of affordable housing; modification of loans on single-family dwellings; loans and investments that support economic development activities—in Square 1 Bank’s current assessment area in Durham and Wake counties, North Carolina.

PacWest represents that, at the request of the FDIC, the company has developed a CRA plan for the combined bank with specific goals for qualifying CRA activities that reflect how the combined bank would meet the credit needs of its communities after consummation of the proposed transaction. For example, PacWest plans to go beyond Square 1 Bank’s existing practices by initiating small business and community development lending in the North Carolina communities currently served by Square 1 Bank. Further, upon consummation of the proposal, PacWest will dedicate a full-time officer for community reinvestment matters in North Carolina reinforced by PWB’s CRA resources in California.

The transaction is intended to combine the strengths of the two organizations to create a more diversified bank with greater geographic and product reach. The current suite of products and services offered by each of PWB and Square 1 Bank will continue to be offered by the combined organization.

Following consummation, Square 1 Bank would operate as a division of PWB. Given its business focus on lending to venture capital firms, Square 1 Bank historically has not

³² A commenter argued that, although Square 1 Bank has provided grants to community groups in North Carolina and has satisfied the requirements of the CRA, the bank’s grantmaking in its community does not benefit those most in need of reinvestment from banking institutions and does not meet the spirit of the CRA requirements.

offered consumer banking deposit, loan, or other products and has offered only limited small business products. As a division of PWB, Square 1 Bank would expand its suite of product and service offerings to include the broader array of products and services offered by PacWest, including, for example, personal loans, home equity lines of credit, automobile loans, and traditional banking products to commercial businesses.

As a division of PWB, Square 1 Bank would also offer a broader array of small business loan products such as real estate loans and equipment loans and leases. Customers of Square 1 Bank would have access to two new business products that offer overdraft protection and working capital for operations and expansions. These products were designed for small businesses in need of smaller lines of credit with lower fees and interest rates, as well as simpler application processes and underwriting requirements, than traditional business lines of credits.

C. Public Benefits of the Proposal

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. PacWest represents that the proposal would allow PacWest to offer increased products and services to customers of Square 1 Bank, which currently consist of venture capital and private equity funds. As noted, PWB would offer small business lines of credit, commercial real estate loans, equipment loans and leases, and PWB's full suite of retail banking products and services to Square 1 Bank customers.

Additionally, PacWest states that Square 1 Bank customers would have access to a larger network of branches and ATMs, and PacWest's customers would have expanded access to venture capital funding and investment advisory services. Further, the proposed acquisitions would create revenue enhancement and cost savings to the combined organization, which PacWest represents would provide it with greater resources to make more loans.

D. 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, information provided by PacWest, confidential supervisory information, and the public comments on the proposal. The Board has also consulted with and considered the views of the FDIC concerning the proposal and the comments objecting to the proposal. Based on that review, the Board concludes that the proposal would result in public benefits that outweigh the potential adverse effects and 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") added "risk to the stability of the United States banking or financial system" to the list of possible adverse effects that the Board must weigh against any expected public benefits in considering proposals under section 3 and section 4(j) of the BHC Act.³³

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 merged firm and the incremental effect of the transaction on the systemic

³³ Sections 604(d) and (e) of the Dodd-Frank Act, amending 12 U.S.C. §§ 1842(c)(7) and 1843(j)(2)(A).

footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.³⁴ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.³⁵

The Board has considered information relevant to risks to the stability of the United States banking or financial system. After consummation, PacWest would have approximately \$19.3 billion in consolidated assets, and by any of a number of alternative measures of firm size, PacWest would not be likely to pose systemic risks. The Board generally presumes that a merger that 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 determines that considerations relating to financial stability are consistent with approval.

Acquisition of Nonbanking Companies

As noted, PacWest has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire certain Square 1 Financial nonbanking subsidiaries, which engage in financial and investment advisory activities that the Board has determined by regulation are so closely related to banking as to be a proper incident thereto for purposes of section 4(c)(8) of the BHC Act.³⁶ The nonbanking subsidiaries to be acquired by PacWest relate to Square 1 Financial's investment in and sponsorship of a "fund of funds" that invests in U.S.-based venture capital investment funds. PacWest has committed to conduct these activities in accordance with the requirements and limitations of the BHC Act, including the limitations imposed by section 13 of the BHC Act, commonly referred to as the Volcker Rule.

In evaluating a proposal under section 4(j) of the BHC Act, the Board must determine that the proposed acquisition of nonbanking companies by PacWest "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."³⁷

³⁴ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

³⁵ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

³⁶ 12 CFR 225.28(b)(6).

³⁷ 12 U.S.C. § 1843(j)(2)(A).

The record indicates that consummation of the proposal would create a stronger and more diversified financial services organization and would expand services, product offerings, and geographic scope to current and future customers of PWB and Square 1 Bank, as well as merger-related cost savings to the combined organization. The record also reflects that the proposed nonbank acquisition within the framework of Regulation Y and Board precedent is not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system. Based on all the facts of record, and for the reasons discussed above, the Board concludes that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects. Accordingly, the Board determines that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposals should be, and hereby are, approved.³⁸ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by PacWest 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 Federal Reserve Bank of San Francisco, acting under delegated authority.

By order of the Board of Governors, effective September 21, 2015.

³⁸ Several commenters requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. The Board's regulations provide for a hearing on a notice filed under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). 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 commenters' requests in light of all the facts of record. In the Board's view, commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenters' requests do not identify disputed issues of fact that are material to the Board's decision that would be clarified by a public hearing. In addition, the requests do not demonstrate why the written comments do not present the commenters' views adequately or why a hearing would otherwise be necessary or appropriate. For these reasons, and based on all the facts of record, the Board determines that a public hearing is not required or warranted in this case. Accordingly, the requests for a public hearing on the proposal are denied.

In addition, commenters requested an additional extension of the comment period for the proposal. The Board's Rules of Procedure contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. 12 CFR 262.25(b)(2). The commenters' requests for additional time do not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the Board has determined not to extend the public comment period.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Order Issued Under Federal Reserve Act

Auburn State Bank
Auburn, Nebraska

*Order Approving the Merger of Banks and the Establishment of a Branch
FRB Order No. 2015–22 (August 31, 2015)*

Auburn State Bank (“Auburn Bank”), Auburn, Nebraska, a state member bank, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act¹ (“Bank Merger Act”) to merge with The Carson National Bank of Auburn (“Carson Bank”), Auburn, Nebraska. In addition, Auburn Bank has applied under section 9 of the Federal Reserve Act (“FRA”)² to establish and operate a branch at the location of Carson Bank’s sole office.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board’s Rules of Procedure.³ The time for submitting comments has expired. Pursuant to the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General. The Board has considered the proposal and all comments received in light of the factors set forth in the Bank Merger Act and the FRA.

Auburn Bank and Carson Bank are under common control of the Grant family and have been since 1946.⁴ Auburn Bank, with total assets of approximately \$99.7 million, operates only in Nebraska. Auburn Bank is the 99th largest insured depository institution in Nebraska, controlling deposits of approximately \$77.8 million, which represent less than 1 percent of the total amount of deposits in insured depository institutions in the state (“state deposits”).⁵

Carson Bank, with total assets of approximately \$71.8 million, operates only in Nebraska. Carson Bank is the 113th largest insured depository institution in Nebraska, controlling deposits of approximately \$60.6 million, which represent less than 1 percent of the total amount of state deposits.

On consummation of the proposal, Auburn Bank would become the 61st largest insured depository institution in Nebraska, controlling deposits of approximately \$138.4 million, representing less than 1 percent of the total amount of state deposits.

¹ 12 U.S.C. § 1828(c).

² 12 U.S.C. § 321.

³ 12 CFR 262.3(b).

⁴ Three siblings, James W. Grant III, Mary Kathleen Green, and Carol Sue Schulte, and their respective children control more than 87 percent of the voting shares of Auburn Bank and more than 95 percent of the voting shares of Carson Bank. Members of the Grant family have controlled more than 25 percent of the voting shares of Auburn Bank since 1946, and more than 25 percent of the voting shares of Carson Bank since 1935.

⁵ Asset data are as of December 31, 2014. Deposit data and state rankings are as of June 30, 2014. In this context, insured depository institutions include insured commercial banks, savings banks, and savings and loan associations.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.⁶ The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the 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.⁷

Auburn Bank and Carson Bank compete in the Nemaha County banking market, which is defined as Nemaha County, Nebraska. In assessing the competitive effects of a proposed bank merger, the Board and the Department of Justice (“DOJ”) review market shares and market concentration in banking markets in which the combined organization would operate after consummation of the proposal, as measured by the Herfindahl-Hirschman Index (“HHI”), under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”).⁸ Under the DOJ Bank Merger Guidelines, affiliates are treated as a single entity. Under this analysis, a merger of affiliated banking institutions does not result in a change to the calculation of market share or market concentration as measured by the HHI.

In reviewing past proposals involving affiliated banking organizations, the Board generally has considered the competitive effects of a proposal at the time the banking organizations came under common control.⁹ In reviewing past proposals, the Board has also considered whether the banking organizations became affiliated prior to 1950, when the Clayton Antitrust Act was first extended to bank mergers.¹⁰ In those cases, the Board has considered whether the banking organizations were small in absolute size at the time of the affiliation and other factors.¹¹

In this case, Auburn Bank and Carson Bank have been affiliated for 69 years, well before the antitrust laws were applied to bank mergers and, to date, the affiliation has not been challenged under antitrust laws by federal or state authorities. At the time of the affiliation, the Clayton Antitrust Act did not extend to bank mergers, and neither the Bank Merger Act nor the Bank Holding Company Act, which both include antitrust provisions, had been enacted. Thus, the original affiliation did not represent an attempt to evade the anti-

⁶ 12 U.S.C. § 1828(c)(5)(A).

⁷ 12 U.S.C. § 1828(c)(5)(B).

⁸ 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 DOJ has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that the DOJ 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.

⁹ See, e.g., *LBT Bancshares, Inc.*, 90 *Federal Reserve Bulletin* 485 (2004); *Mid-Nebraska Bancshares, Inc.*, 64 *Federal Reserve Bulletin* 589 (1978), *aff'd*, 627F.2d 266 (D.C. Cir. 1980); *Mahaska Investment Co.*, 63 *Federal Reserve Bulletin* 579 (1977).

¹⁰ The Clayton Antitrust Act was first applied to bank mergers with enactment of the Celler-Kefauver Antimerger Act of 1950. See Law of December 29, 1950, ch. 1184, 64 Stat. 11251126 (current version at 15 U.S.C. § 18) (subjecting mergers to scrutiny under the Clayton Antitrust Act). The laws were extended with enactment of the Bank Merger Act of 1960. See Bank Merger Act, Pub. L. No. 86-463, 74 Stat. 129 (1960) (requiring the Board to consider the competitive effects of proposed bank mergers).

¹¹ See *Victoria Bankshares, Inc.*, 70 *Federal Reserve Bulletin* 229, 230 (1984) (“*Victoria Order*”); *Shickley State Company*, 70 *Federal Reserve Bulletin* 360 (1984); *First Monco Bancshares, Inc.*, 69 *Federal Reserve Bulletin* 293 (1983); *Texas East Bancorp*, 69 *Federal Reserve Bulletin* 636 (1983) (“*Texas Order*”).

trust laws or the Bank Merger Act. In 1946, Auburn Bank controlled approximately \$2.2 million in deposits, while Carson Bank controlled approximately \$2.9 million in deposits, which were both well below the mean size for all commercial banks in the United States at that time.¹²

The DOJ has conducted a review of the competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal. Based on all the facts of record, including the longstanding affiliation of Auburn Bank and Carson Bank, the fact that the affiliation was established prior to the application of the antitrust laws to bank mergers, the lack of any previous challenge to the affiliation of Auburn Bank and Carson Bank on competitive grounds, and the small absolute size of both institutions, both at the time of their affiliation in 1946 and now, 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 Nemaha 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 this proposal under the Bank Merger Act, the Board has considered the financial and managerial resources and future prospects of the institutions involved. In its evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the pro forma organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

Auburn Bank is well capitalized and would remain so on consummation of the proposal. Carson Bank would be merged into Auburn Bank. The asset quality, earnings, and liquidity of Auburn Bank are consistent with approval, and Auburn Bank appears to have adequate resources to absorb the costs of the proposal and to complete the integration of Auburn Bank's and Carson Bank's operations. 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 Auburn Bank and has reviewed the examination records of Auburn Bank, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences with Auburn Bank and the organization's record of compliance with applicable banking, consumer protection, and anti-money-laundering laws. The Board also has considered Auburn Bank's plans for implementing the proposal. Auburn Bank is considered to

¹² At the time, the mean size for all commercial banks in the United States was \$10.3 million. *See, e.g., Victoria Order* at 230 (institutions controlled \$2.4 million and \$1.4 million in deposits, respectively); *Texas Order* at 636 (institutions controlled \$7.1 million and \$1.9 million in deposits, respectively). At the time of their affiliation in 1946, Auburn Bank and Carson Bank were the two largest of five depository institutions in Nemaha County, with market shares of 31 and 41 percent, respectively, and a combined market share of 72 percent of deposits. Currently, Auburn Bank and Carson Bank control market shares of 33.7 percent and 26.3 percent, respectively, and the combined entity would control a market share of 60 percent of deposits.

be well managed, and its board of directors and senior management have substantial banking experience. Auburn Bank would operate the acquired branch of Carson Bank under its existing policies and procedures, which are considered to be satisfactory. In addition, Auburn Bank's management has 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, the Board concludes that considerations relating to the financial and managerial resources and future prospects of Auburn Bank, as well as the records of effectiveness of Auburn Bank and Carson Bank in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served. 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").¹³ In addition, the Board considers the banks' overall compliance record, recent fair lending examinations, and other supervisory assessments; the supervisory views of examiners; and other supervisory information. The Board may also consider the acquiring institution's business model, its marketing and outreach plans, the organization's plans following consummation, and any other information the Board deems relevant.

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,¹⁴ 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.¹⁵ In addition, fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics.

The Board has considered all the facts of record, including reports of examination of CRA performance for Auburn Bank and Carson Bank, the fair lending and compliance records of both banks, confidential supervisory information, and information provided by Auburn Bank.

A. Record 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.¹⁶ The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.¹⁷ An institution's

¹³ 12 U.S.C. § 2901 *et seq.*

¹⁴ 12 U.S.C. § 2901(b).

¹⁵ 12 U.S.C. § 2903.

¹⁶ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

¹⁷ 12 U.S.C. § 2906.

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 the small bank lending test to evaluate the performance of a small insured depository institution in helping to meet the credit needs of the communities it serves. The institution's lending performance is based on the institution's loan-to-deposit ratio and other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, and qualified investments; the percentage of loans and other lending-related activities located in the institution's assessment areas; the institution's record of lending to and engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes; the geographic distribution of the institution's loans; and the institution's record of taking action in response to written complaints about its performance in helping to meet credit needs in its assessment areas. Consequently, the Board considers the CRA rating to be an important indicator, 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 Auburn Bank. Auburn Bank was assigned an overall "Satisfactory" rating by the Federal Reserve Bank of Kansas City ("Reserve Bank") at its most recent CRA performance evaluation, as of April 9, 2012 ("Auburn Bank Evaluation").¹⁸ Examiners found that Auburn Bank's loan-to-deposit ratio reflected a reasonable effort to extend credit, given the bank's size, financial condition, the competitive lending market, and the credit needs of the assessment area. Examiners concluded that the bank's lending within its assessment area, including its distribution of lending to borrowers of different income levels and to farms of different revenue sizes, was reasonable. In evaluating Auburn Bank's performance, examiners found that Auburn Bank had a satisfactory record of meeting the credit needs of its assessment area, including those of low- and moderate-income families.

CRA Performance of Carson Bank. Carson Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency as of December 2, 2013 ("Carson Bank Evaluation").¹⁹ Examiners found that Carson Bank's average loan-to-deposit ratio was reasonable given economic and demographic factors, and the bank originated a majority of its loans inside the assessment area. Examiners noted that Carson Bank's community development activities demonstrated good responsiveness to community development needs in its 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. In this regard, Auburn Bank has represented that the proposal would provide customers of the combined organization with access to an expanded branch network and would offer additional products and services not currently offered to Carson customers.

¹⁸ The Auburn Bank Evaluation was conducted using the Small Institution CRA Examination Procedures. Examiners reviewed the bank's average loan-to-deposit ratio since the prior CRA examination dated February 4, 2008; a statistical sample of agricultural lending activity from September 2011 through March 2012; and a statistical sample of the bank's residential real estate lending activity from March 2011 through March 2012. The Auburn Bank Evaluation reviewed the bank's Nemaha County assessment area.

¹⁹ The Carson Bank Evaluation was also conducted using the Small Institution CRA Examination Procedures. Examiners reviewed the bank's agricultural lending activity from May 27, 2008, through December 2, 2013. The Carson Bank Evaluation reviewed the bank's Nemaha County assessment area.

These products and services include internet bill pay, mobile banking, and remote deposit capture. Auburn Bank has also represented that customers of the combined organization would benefit from a higher legal lending limit following the merger.

C. 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, confidential supervisory information, and information provided by Auburn Bank. Based on that review, the Board concludes that the proposal would result in public benefits and that the convenience and needs factor is consistent with approval.

Financial Stability

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

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.²¹ 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.²²

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Auburn Bank would have approximately \$171.5 million in consolidated 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 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 determines that considerations relating to financial stability are consistent with approval.

²⁰ Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1828(c)(5).

²¹ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

²² For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

Establishment of a Branch

Auburn Bank has applied under section 9 of the FRA to establish a branch at the current location of Carson Bank,²³ and the Board has considered the factors it is required to consider when reviewing an application under that section.²⁴ Specifically, the Board has considered Auburn 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. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

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

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

By order of the Board of Governors, effective August 31, 2015.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

²³ Carson Bank's main office and only location is 2301 Dahlke Avenue, Auburn, Nebraska 68305.

²⁴ 12 U.S.C. § 322; 12 CFR 208.6.