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Legal Developments: Third Quarter, 2016

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

KeyCorp
Cleveland, Ohio

Order Approving the Merger of Bank Holding Companies and the Acquisition of a Bank
FRB Order No. 2016-12 (July 12, 2016)

KeyCorp, Cleveland, Ohio, a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act,[1] to acquire First Niagara Financial Group, Inc. ("First Niagara"), and thereby indirectly acquire its subsidiary bank, First Niagara Bank, National Association ("First Niagara Bank"), both of Buffalo, New York. Following the proposed acquisition, First Niagara Bank would be merged into KeyCorp's subsidiary bank, KeyBank National Association ("KeyBank"), Cleveland, Ohio.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 75863 (December 4, 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.

KeyCorp, with consolidated assets of approximately $98.6 billion, is the 32nd largest depository organization in the United States.[4] KeyCorp controls approximately $72.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] KeyCorp controls KeyBank, which operates in Alaska, Colorado, Florida, Idaho, Indiana, Maine, Michigan, New York, Ohio, Oregon, Utah, Vermont, and Washington. KeyBank is the 15th largest insured depository institution in New York, controlling deposits of approximately $15.0 billion, which represent approximately 1.1 percent of the total deposits of insured depository institutions in that state.

First Niagara, with consolidated assets of approximately $40.1 billion, is the 45th largest depository organization in the United States. First Niagara controls approximately $29.0 billion in consolidated deposits, which represent less than 1 percent of the total

1 12 U.S.C. § 1842.
2 The merger of First Niagara Bank into KeyBank is subject to the approval of the Office of the Comptroller of the Currency ("OCC") pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c).
3 12 CFR 262.3(b).
4 Asset data are as of March 31, 2016, and deposit data are as of June 30, 2015, unless otherwise noted.
5 In this context, insured depository institutions include commercial banks, credit unions, savings banks, and savings associations.

amount of deposits of insured depository institutions in the United States. First Niagara controls First Niagara Bank, which operates in Connecticut, Massachusetts, New York, and Pennsylvania. First Niagara Bank is the 14th largest insured depository institution in New York, controlling deposits of approximately $18.8 billion, which represent approximately 1.4 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, KeyCorp would become the 26th largest depository organization in the United States, with consolidated assets of approximately $138.7 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. KeyCorp would control total deposits of approximately $101.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[6] KeyCorp would become the ninth largest depository organization in New York, controlling deposits of approximately $33.8 billion, which represent approximately 2.5 percent of the total deposits of insured depository institutions in that state.

Public Comments on the Proposal

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Board's Rules of Procedure.[7] The Board extended the initial period for public comment to accommodate the public interest in this proposal, providing interested persons until January 31, 2016, a total period of 62 days, to submit written comments. The time for submitting comments has expired, and the Board received comments concerning the proposal from 439 individuals and organizations.

The Board received comments from 388 commenters supporting the proposal. Most of these commenters are charitable and community organizations that describe favorable experiences with KeyCorp and KeyBank and commended the company and its management for its support of various community development programs, initiatives, projects, and partnerships. Supporting commenters also asserted that KeyBank has (i) worked to expand credit in distressed areas, (ii) provided low- and moderate-income ("LMI") households with access to financial services and programs in financial literacy, and (iii) developed innovative projects to benefit low-income and minority communities.

The Board received comments from 51 commenters either opposing or expressing concerns about the proposal or requesting that the Board only approve the proposal subject to certain conditions. Many commenters alleged that the proposal would have significant anticompetitive effects in certain upstate New York banking markets, particularly in the Buffalo-Niagara Falls, New York banking market ("Buffalo market"). Many commenters also alleged that branch closures and consolidations contemplated by KeyCorp in connection with the transaction would result in significant job losses and a reduction in the availability of banking services and products in upstate New York, particularly in LMI communities. Several commenters alleged that the products and services offered by KeyBank are inferior to those offered by First Niagara Bank, and some criticized KeyBank's lending record to minorities in certain Metropolitan Statistical Areas ("MSAs"), based on lending data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"). Some commenters questioned the merger consideration to be paid to First Niagara shareholders, and some criticized the payments that certain First Niagara executives would receive upon consummation of the proposal. Two commenters also

[6] The pro forma deposits of the combined organization include the deposits that KeyCorp proposes to divest through its sale of 18 First Niagara Bank branches in Buffalo, New York, discussed in more detail below.

[7] *See* 12 CFR 262.3(b).

alleged that the proposal would have a negative impact on the financial stability of the United 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.[8] 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.[9] In addition, the Board may not approve an interstate application if the bank holding company controls or would upon consummation of the proposed transaction control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company would upon consummation control 30 percent or more of the total deposits of insured depository institutions in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.[10]

For purposes of the BHC Act, the home state of KeyCorp is Ohio and the home state of First Niagara is New York.[11] First Niagara also operates in Connecticut, Massachusetts, and Pennsylvania. KeyCorp is well capitalized and well managed under applicable law, and KeyBank has a satisfactory Community Reinvestment Act ("CRA")[12] rating. Massachusetts has a three-year minimum age requirement and New York and Connecticut have five-year requirements. First Niagara has been in existence for more than five years.[13] Pennsylvania does not have a minimum age requirement that applies to KeyCorp's acquisition of First Niagara and First Niagara Bank.[14]

On consummation of the proposed transaction, KeyCorp would control less than 1 percent of the total amount of deposits in insured depository institutions in the United States. In addition, KeyCorp would control approximately 2.5 percent of the total amount of deposits of insured depository institutions in New York, the only state in which KeyCorp and First Niagara have overlapping banking operations. 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

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8 12 U.S.C. § 1842(d)(1)(A).

9 12 U.S.C. § 1842(d)(1)(B).

10 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, headquartered, or operates a branch. *See* 12 U.S.C.§1841(o)(4)–(7).

11 *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.

12 12 U.S.C. § 2901 *et seq.*

13 *See* Mass. Gen. Laws ch. 167A, § 2; N.Y. Banking Law § 142-a(1); Conn. Gen. Stat. § 36a-411.

14 *See* 7 Pa. Stat. Ann. §§ 1601–1610.

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.[15]

KeyCorp and First Niagara have subsidiary depository institutions that compete directly in 12 banking markets in the state of New York: the Albany, Binghamton, Buffalo, Franklin, Ithaca, Jamestown, Metro New York City, Rochester, Saint Lawrence, Syracuse, Utica-Rome, and Watertown banking markets ("New York banking markets").[16]

The Board received comments from 23 commenters objecting to the proposal on the grounds that it would have significant anticompetitive effects in certain upstate New York banking markets, particularly the Buffalo market. Commenters expressed concern that consummation of the proposal would, among other things, have an adverse impact on the rates and products offered in the upstate New York region. Some commenters asserted that the upstate New York region is already highly concentrated and that the proposal would reduce consumer access to banking competition in the region to an unacceptably low level.

The Board has considered the competitive effects of the proposal in each of the relevant markets. In particular, the Board has considered the number of competitors that would remain in the markets; the relative shares of total deposits in insured depository institutions in the markets ("market deposits") that would be controlled by KeyCorp;[17] the concentration levels of market deposits and the increase in these levels, as measured by the HerfindahlHirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[18] the comments received on the proposal; other characteristics of the markets; and, as discussed below, commitments made by KeyCorp to divest 18 First Niagara Bank branches in the Buffalo 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 for the Albany, Binghamton, Franklin, Ithaca, Jamestown, Metro New York City, Rochester, Saint Lawrence, Syracuse, Utica-Rome, and Watertown markets.[19] On consummation of the proposal, the change in the HHI in the Metro New York City, Rochester, and Utica-Rome markets would be small, and the markets would remain unconcentrated. Although the change in the HHI in the Albany, Jamestown, and Syracuse markets would be above 200, each of these banking

[15] 12 U.S.C. § 1842(c)(1).

[16] Except for the Buffalo market, these banking markets are defined in the Appendix. Certain New York banking markets include areas of Connecticut, New Jersey, and Pennsylvania.

[17] Deposit and market share data are as of June 30, 2015, 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 market share calculations on a 50 percent weighted basis. *See*, *e.g.*, *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

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

[19] The competitive effects of the proposal in these markets are described in the Appendix.

markets would remain moderately concentrated. The Binghamton, Franklin, Ithaca, Saint Lawrence, and Watertown markets would remain highly concentrated but the changes in the HHI in these markets would be small. In each of these banking markets, numerous competitors would remain.

Banking Market Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Buffalo market[20] warrant a detailed review because the concentration level on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines when using initial competitive screening data. Using that screening data, KeyCorp is the third largest depository organization in the Buffalo market, controlling approximately$3.6 billion in deposits, which represent approximately 8.7 percent of market deposits. First Niagara is the second largest depository organization in the Buffalo market, controlling approximately $10.4 billion in deposits, which represent approximately 25.0 percent of market deposits. On consummation, KeyCorp would become the second largest depository organization in the Buffalo market, controlling approximately $14.1 billion in deposits, which represent approximately 33.7 percent of market deposits. The HHI in this market would increase by 436 points, from 3167 to 3603.

To mitigate the potentially adverse competitive effects of the proposal in the Buffalo market, KeyCorp has committed to divest 18 of First Niagara Bank's 55 branches in the Buffalo market to a competitively suitable purchaser.[21] In addition to the divestiture, the Board also 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 Buffalo market.[22] The competitive effects are mitigated by several factors that indicate that the increase in concentration in the Buffalo market, as measured by the above HHI, 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 Buffalo market,[23] as measured in terms of the

[20] The Buffalo market is defined as Cattaraugus, Erie, and Niagara counties; Allen, Alma, Amity, Angelica, Belfast, Bolivar, Caneadea, Centerville, Clarksville, Cuba, Friendship, Genesee, Granger, Hume, New Hudson, Rushford, Scio, and Wirt towns, and Oil Springs reservation in Allegany County; Batavia city, Alabama, Alexander, Batavia, Darien, Oakfield, and Pembroke towns, and Tonawanda reservation in Genesee County; Ridgeway and Shelby towns in Orleans County; and Arcade, Attica, Bennington, Eagle, Java, Orangeville, Pike, Sheldon, and Wethersfield towns in Wyoming County, all in New York.

[21] As a condition of consummating the proposal, KeyCorp has committed that it will execute, before consummation of the proposal, a sales agreement with a competitively suitable institution for the sale of 18 branches. KeyCorp also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, KeyCorp has committed that, if the proposed divestiture is not completed within the 180-day period, KeyCorp would transfer the unsold branches to an independent trustee, who would be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchasers must be deemed acceptable to the Board. *See*, *e.g.*, *BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

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

[23] 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*.

ratios of those types of loans to total loans and assets.[24] The Board has concluded that deposits controlled by this institution should be weighted at 100 percent in the market-share calculations.

In addition, nine credit unions exert a competitive influence in the Buffalo 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 market.[25] 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.

Taking into account the divestiture of the 18 First Niagara Bank branches, and with the deposits of the thrift weighted at 100 percent and the nine credit unions at 50 percent, the Buffalo market appears to be highly concentrated before and after the transaction, but the HHI would increase by less than 200 points. Upon consummation of the merger, KeyCorp would control approximately 29.1 percent of market deposits, and the HHI would increase by 190 points to a level of 3272, a level that would be within the DOJ Bank Merger Guidelines. Including thrifts, 19 depository organizations would continue to operate in the Buffalo market, including one institution with a market share of almost 50 percent, and two other institutions with market shares above 8 percent.

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

Based on all of the facts of record, including the proposed 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 12 banking markets in which KeyCorp and First Niagara 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 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 regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organi-

[24] This thrift institution has a ratio of commercial and industrial loans to assets of slightly less than 5 percent, which has been increasing in recent years. This is comparable to 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.*

[25] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See*, *e.g.*, *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc.*, (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2d Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

zations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete 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.

KeyCorp and KeyBank are both well capitalized and would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a cash and stock purchase, with a subsequent merger of the subsidiary depository institutions.[26] The asset quality, earnings, and liquidity of KeyBank and First Niagara Bank are consistent with approval, and KeyCorp 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.

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 KeyCorp, First Niagara, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by KeyCorp; the Board's supervisory experiences with KeyCorp and First Niagara 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.

KeyCorp, First Niagara, and their subsidiary depository institutions are each considered to be well managed. KeyCorp's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and its risk-management program appears consistent with approval of this expansionary proposal.[27]

The Board also has considered KeyCorp's plans for implementing the proposal. KeyCorp has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address all aspects of the post-integration process for this proposal. KeyCorp would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, KeyCorp's and First Niagara's managements have the experience and resources to ensure that the combined organization operates in a safe and sound manner, and KeyCorp plans to integrate First Niagara's existing management and personnel in a manner that augments KeyCorp's management.[28]

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[26] To effect the holding company merger, each share of First Niagara common stock would be converted into a right to receive KeyCorp common stock and cash, based on an exchange ratio. KeyCorp has adequate resources to fund the cash portion of the transaction.

[27] Several commenters expressed concerns regarding the share price offered for First Niagara. Some commenters also expressed concerns that the transaction would mostly benefit First Niagara executives and criticized payments that certain First Niagara executives may receive upon consummation of the proposal. The Board notes that KeyCorp and First Niagara filed with the U.S. Securities and Exchange Commission information regarding the proposed transaction, including information concerning the compensation of certain First Niagara executives, and shareholders of both organizations approved the proposal.

[28] KeyCorp plans to increase the number of seats on its board of directors and, on consummation, First Niagara would select three of its current directors to join KeyCorp's board. In addition, KeyCorp anticipates inviting other current First Niagara directors to serve on one or more of KeyCorp's regional advisory boards.

Based on all the facts of record, including KeyCorp's supervisory record, managerial and operational resources, plans for operating the combined institution after consummation, and comments received on the proposal, 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 KeyCorp and First Niagara 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.[29] 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, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.[30] 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 institution's business model, its marketing and outreach plans, the institution'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,[31] 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, in evaluating bank expansionary proposals.[32] 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 KeyBank and First Niagara Bank, the fair lending and compliance records of both banks, the supervisory views of the OCC and the Consumer Financial Protection Bureau ("CFPB"), confidential supervisory information, information provided by KeyCorp, and the public comments received on the proposal.

Summary of Public Comments on Convenience and Needs

As noted above, the Board received comments from 388 commenters supporting the proposal. A majority of these commenters are charitable and community organizations that pointed to the benefits that KeyCorp has provided to the communities that they serve. These commenters described numerous grants and donations made by KeyCorp to charitable organizations and educational providers in communities across the country and noted that KeyCorp has provided financial aid to LMI students and funded financial literacy programs. These commenters also described KeyCorp's participation in community-related activities, such as tax preparation services for indigent persons and participation in financial literacy programs.

[29] 12 U.S.C. § 1842(c)(2).

[30] 12 U.S.C. § 2901 *et seq*.

[31] 12 U.S.C. § 2901(b).

[32] 12 U.S.C. § 2903.

Twenty-eight commenters argued that the proposal would negatively affect the convenience and needs of the communities served by KeyCorp and First Niagara. These commenters expressed concerns that the branch closures, consolidations, and divestitures planned by KeyCorp in connection with the proposal would adversely impact the Buffalo market and the upstate New York region generally, because portions of the region are already underserved from a banking perspective. These commenters further asserted that certain portions of the local population, including LMI individuals, persons living in LMI neighborhoods, and disabled persons, depend upon their physical access to bank branches and ATMs, and that the planned branch closures would have the effect of limiting that access. Several commenters claimed that First Niagara Bank customers would experience service disruptions during the merger integration process. In addition, many commenters expressed concern that the proposal would result in significant job losses in upstate New York.

Commenters also made various assertions related to KeyCorp's lending, investment, and service activities. Several commenters requested that KeyCorp commit to a comprehensive plan outlining specific strategies and goals for enhancing the communities it serves, including demonstrating a significant public benefit. Some commenters requested that the Board's approval of the transaction be conditioned on KeyCorp developing a comprehensive community benefits plan that better serves the communities affected by the merger. Some commenters proposed potential lending, investment, or service initiatives that KeyBank could pursue in the communities it serves, particularly in upstate New York, or argued that KeyBank's proposed initial commitment to charitable donations is inadequate relative to the proposed expansion of the organization's overall footprint.

Commenters also alleged that KeyBank and First Niagara Bank are not meeting the credit needs of certain communities that the banks serve, and criticized the banks' lending records to minority borrowers in certain markets, based on 2013 HMDA data. Commenters expressed concerns about a potential increase in discriminatory lending in the markets that will be served by the combined organization following the proposed transaction.

Businesses of the Involved Institutions and Response to Comments

KeyCorp, through KeyBank and its nonbanking subsidiaries, provides a wide range of retail and commercial banking, commercial leasing, investment management, consumer finance, and investment banking products and services to individual, corporate, and institutional clients. KeyCorp provides a range of financial products and services, including deposit, lending, cash management, investment products, equipment finance, retail securities brokerage, insurance, and institutional asset management services. First Niagara, through First Niagara Bank and its nonbanking subsidiaries, provides retail and business banking services, including residential and commercial real estate loans, commercial business loans and leases, consumer loans, wealth management products, deposit products, and capital markets services. First Niagara Bank provides customers retail and commercial deposit products, residential and commercial real estate loans, commercial business loans and leases, consumer loans, and wealth management products. In New York, the only state in which the banks have overlapping operations, KeyBank and First Niagara Bank operate 239 and 195 branches, respectively.

KeyCorp asserts that it is strongly committed to serving its communities, particularly LMI communities, demonstrated by the fact that KeyBank has received eight consecutive overall "Outstanding" CRA ratings. KeyCorp argues that, since KeyBank's most recent CRA evaluation, it has provided a substantial number of community development loans supporting activities aimed at benefitting LMI individuals and communities, and has made significant community development investments. KeyCorp further contends that its commitment to its communities is demonstrated by its development of a suite of innovative, low-cost products and services designed to benefit LMI individuals. KeyCorp asserts that it expects to improve upon First Niagara's existing programs under the CRA in the communities served by First Niagara, and will continue providing a high level of services to the LMI communities it already serves.

KeyCorp argues that its legacy of community investment and civic participation demonstrates that it will take seriously the concerns expressed by commenters regarding community banking and investments. In response to these commenters, KeyCorp held community outreach meetings and worked closely with various community organizations to develop a National Community Benefits Plan ("Plan"). The Plan calls for KeyBank to invest $16.5 billion in its communities over a five-year period, starting in 2017. KeyCorp asserts that up to 35 percent of the total commitment would be targeted for the areas where KeyBank and First Niagara Bank currently overlap in New York. The Plan establishes goals for loans, investments, and products specifically aimed at benefitting LMI individuals and communities, including home mortgages, small business loans, community development loans, investments, and philanthropic contributions. In addition, the Plan establishes targets for branching in LMI communities across the bank's geographic footprint and, separately, the state of New York. The bank will open an additional branch in an LMI community in East Buffalo and keep open four other branches in LMI neighborhoods that the bank initially planned to close. KeyCorp further asserts that the bank will enhance its diversity and inclusion policies, expand its community engagement and marketing efforts, and establish an advisory council made up of various community organizations that will meet periodically to assess KeyBank's progress under the Plan and to be informed of the bank's future initiatives. KeyCorp asserts that the Plan addresses, and should substantially resolve, the concerns expressed by commenters.

KeyCorp asserts that the proposed branch closures would optimize the combined organization's branch network due to the significant overlap between KeyBank's and First Niagara Bank's branch networks in upstate New York. KeyCorp further asserts that in many cases, the closures are effectively branch consolidations and that the availability of banking services in those communities will not be reduced, because another KeyBank branch will be in close proximity. Moreover, KeyCorp represents that the branch closures would be completed in accordance with the OCC's branch closing notice regulations, which provide the public an opportunity to comment, and KeyBank's branch closing policy.[33] KeyCorp asserts that it is committed to maintaining branch access in LMI communities, and for branch closings in LMI areas, KeyCorp would seek to ensure that another branch would remain in close proximity of the closed branch.

Lastly, KeyCorp contends that it has taken substantial steps to ensure that consummation of the proposal would not result in any disruption of banking services, including the closing of accounts, for customers of First Niagara Bank. KeyCorp has assembled an integration team with significant experience in customer and systems integration, which is working with its counterparts at First Niagara to ensure that the transition from First Niagara to KeyCorp is as seamless as possible for customers

[33] 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. 34844 (1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal supervisory agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

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 public 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.[34] In this case, the Board considered the supervisory views of and information provided by the OCC.

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.[35] 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 a variety of factors, including (1) the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution of the institution's lending, 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; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amount of loans to low-, moderate-, middle-, and upper-income individuals;[36] (4) the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

As noted above, some commenters alleged that, based on 2013 HMDA data, KeyBank and First Niagara Bank have failed to adequately serve all of their communities, including the Buffalo market, and that KeyBank has not shown a desire to expand services in that market.

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

34 *See* Interagency Questions and Answers Regarding Community Reinvestment, 75 Fed. Reg. 11,642, 11,665 (March 11, 2010).

35 12 U.S.C. § 2906.

36 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).

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.[37] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of KeyBank

KeyBank was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the OCC, as of October 1, 2011 ("KeyBank Evaluation").[38] KeyBank received "Outstanding" ratings for the Lending Test and the Service Test and a "High Satisfactory" rating for the Investment Test. Although KeyBank's overall rating was based on a blend of its state and multistate metropolitan area ratings, examiners gave the greatest weight to the Cleveland-Elyria-Mentor, Ohio MSA; the Albany-Schenectady-Troy, New York MSA; and the Seattle-Bellevue, Washington MSA ("primary rating areas"), because those three primary rating areas represented the bank's most significant markets in terms of deposit concentrations. The Board has consulted with the OCC regarding the KeyBank Evaluation and KeyBank's policies and procedures relating to the CRA.

Examiners concluded that KeyBank's lending performance was excellent overall. KeyBank's borrower distribution was good in all three primary rating areas, and geographic distribution was good in two primary rating areas and adequate in one. Examiners noted that the bank's HMDA loan distribution by borrower was excellent in one primary rating area and good in the other two, and its HMDA geographic distribution was good in two primary rating areas. Geographic distribution of small loans to businesses was excellent in two primary rating areas, and good in the third. Examiners found KeyBank's community development lending to be significantly positive, which elevated the bank's lending performance to excellent in two primary rating areas. The elevated ratings were based on the significance of community development lending volume, innovativeness, complexity, and level of responsiveness by the bank to community needs.

Examiners found that KeyBank had a good volume of qualified community development investments and grants overall. The bank's excellent performance in limited-scope assessment areas had a positive impact on overall performance in one primary rating area. The bank showed good responsiveness to community needs for affordable housing primarily through the purchase of Low Income Housing Tax Credits ("LIHTC"), which were the foundation of the bank's investment strategy. Examiners found the bank responded favorably to community needs for revitalization and stabilization of LMI neighborhoods, although to a lesser degree. Examiners noted that the bank made significant use of complex investments through LIHTCs that routinely involved collaborative efforts among numerous funding sources, including government entities, private equity funds, financial institutions, and other private investors. The investments were responsive to affordable housing and revitalization and stabilization needs throughout the bank's assessment areas.

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[37] Other data relevant to credit decisions could include credit history problems, 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.

[38] The KeyBank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners used 2010 Mortgage and Small Business Peer Data to evaluate the bank's lending market share. For deposit information, examiners used the most recent Federal Deposit Insurance Corporation Deposit Market Share Reports, as of June 30, 2011. The KeyBank Evaluation reviewed HMDA and small business/farm loan originations from January 1, 2008, through June 30, 2011. The evaluation period for investment, retail, and community development activities (loans and services) was July 1, 2008, through September 30, 2011. The KeyBank Evaluation included full-scope reviews of one assessment area in each state where KeyBank had a branch (typically, the MSA or metropolitan division that contained the largest percentage of the bank's deposits within the state), as well as each multistate MSA where the bank had branches in more than one state.

Examiners concluded that KeyBank's service performance was excellent overall. Examiners noted that the bank's delivery systems were readily accessible to all portions of the bank's assessment areas, and that branch distribution was excellent in the three primary rating areas. Access to banking facilities and services was enhanced in the primary rating areas by offices located in middle-income geographies located in close proximity to moderate-income geographies. Examiners found that KeyBank's record of opening and closing branch offices had improved the accessibility of delivery systems in LMI geographies and that, within the primary rating areas, branch hours did not vary in a way that inconvenienced LMI geographies. The bank was found to offer similar products and services throughout its branch network, and some of the products were tailored for LMI geographies and individuals. Examiners stated that in one primary rating area, consumer advocates considered the bank's alternate payday lending product to be a model for other banks. Examiners found that the bank offered a relatively high level of community development services in its primary rating areas.

KeyBank's CRA Efforts Since the 2011 Evaluation

KeyCorp represents that, since the KeyBank Evaluation, the bank has made community development loans across its entire geographic footprint to support activities including affordable housing, economic development, community services for LMI persons or communities, and revitalization and stabilization of LMI areas. KeyBank has developed community lending products and services aimed at extending banking services to individuals who may be new or unfamiliar with banking, or who have had challenges managing a banking relationship in the past. The products include low-fee check cashing services, deposit accounts, low-fee revolving lines of credit, credit rehabilitation loans, and affordable home financing. KeyBank is one of only three insured depository institutions approved by the U.S. Department of Housing and Urban Development as a Multifamily Accelerated Processing Lender, enabling the bank to make expedited lending decisions on multifamily mortgage applications. The bank provides free in-person financial literacy education for all members of its communities on topics such as budgeting, managing money, and building and maintaining good credit, which are taught by KeyCorp employee volunteers. The bank also offers online financial literacy courses in English and Spanish, and provides free tax preparation for local residents during its annual "Super Refund Saturday" event.

Since the KeyBank Evaluation, the bank also has provided HMDA-reportable loans, small business or small farm loans, and community development loans in the Buffalo market. The bank provided community development loans supporting the construction of affordable housing units and redevelopment of commercial, industrial, and mixed-use buildings. In addition, KeyBank provided construction loans in connection with an affordable multifamily residential development aimed at providing housing options and amenities for families with incomes ranging 40 to 80 percent below the area's median income, and for the development of additional infrastructure needed to provide access to a community redevelopment site. KeyBank also made community development investments in the Buffalo market, including through LIHTC investments and New Market Tax Credit investments. In addition, KeyBank Foundation, KeyCorp's nonprofit charitable foundation, made donations to various philanthropic causes across the upstate New York region.

CRA Performance of First Niagara Bank

First Niagara Bank was assigned an overall "Satisfactory" rating at its CRA performance evaluation by the Office of Thrift Supervision ("OTS"), as of March 12, 2007 (the "First

Niagara Bank Evaluation").[39] The bank received "High Satisfactory" ratings for the Lending Test and the Service Test, and received an "Outstanding" rating for the Investment Test.[40] The OCC is now the primary supervisor of First Niagara Bank and has been conducting its own evaluation of the bank's CRA performance.

Overall, examiners found that the vast majority of the bank's lending was originated within its assessment areas; however, levels of lending varied by specific assessment area. Examiners noted that the bank's geographic distribution of its residential lending was adequate overall, but varied by assessment area. Examiners noted that the bank's distribution of home loans based on borrower income was reasonable overall, but varied from excellent to poor depending on the specific assessment area. Examiners also noted that loan volume in LMI geographies was adequate overall, but was poor in several assessment areas. Examiners highlighted that in several assessment areas, the bank had an excellent volume of multifamily lending, particularly in LMI census tracts. Examiners also found that the bank displayed a consistently excellent level of small business lending throughout its assessment areas. Examiners emphasized that the bank had a good record of community development lending and used flexible, innovative, and alternative lending programs to help make credit available to LMI borrowers within its assessment areas and that the bank had used Federal Home Loan Bank programs extensively. Examiners further noted that the bank's delivery systems were accessible to all portions of its assessment areas, and the bank provided a satisfactory level of community development services to its many communities.

First Niagara Bank was scheduled by the OCC for a CRA evaluation in 2012. Although that evaluation is largely complete, the results have not been released. The Board has consulted with the OCC regarding the First Niagara Bank Evaluation and this subsequent CRA evaluation. The Board notes that KeyCorp would be applying its CRA program, policies, procedures, and initiatives at the combined organization and that KeyBank has received eight consecutive "Outstanding" ratings for CRA.

Views of the OCC and CFPB

The Board has consulted with the OCC, the primary supervisor of both KeyBank and First Niagara Bank, in connection with this proposal and the OCC's review of the bank merger underlying this proposal. The OCC separately received comments on the bank merger application, and was provided with the comments received by the Board both in support of and against the proposal. The OCC is considering all of the comments in connection with its review of the bank merger application.

In its review of the proposal, the Board consulted the OCC regarding both institutions' CRA, consumer compliance, and fair lending records. The Board also consulted with the OCC regarding KeyBank's policies and procedures relating to fair lending and other consumer protection laws and regulations, and KeyBank's ability to integrate First Niagara Bank and resolve any concerns in a timely manner. In addition to consulting with the OCC, the Board also consulted with the CFPB regarding First Niagara Bank's record of compli-

[39] The First Niagara Bank Evaluation was conducted using OTS Large Institution Examination Procedures, and the examiners evaluated the following factors: performance in granting residential, small business, and community development loans; the level of retail banking and community development services provided; and the level of qualified investments made within the assessment area. The review period was 2004-2006. The lending test focused on loans reportable in accordance with HMDA, small business loans, and community development loans. Examiners also considered information provided by community leaders in the bank's assessment areas.

[40] For the First Niagara Bank Evaluation, examiners conducted reviews of the following entire MSAs: Buffalo-Niagara Falls; Albany-Schenectady-Troy; Glen Falls; and Ithaca, all in New York. The examiners conducted reviews of certain counties in the following MSAs: Rochester, Syracuse, Utica-Rome, and Poughkeepsie-Newburgh-Middletown. Examiners also conducted reviews of the following counties in non-MSAs: Greene, Columbia, Seneca, Courtland, Cayuga, Fulton, Montgomery, and Genesee, all in New York.

ance with consumer protection laws and regulations and policies and procedures relating to fair lending and other consumer protection laws and regulations, as well as about the lending records of both KeyBank and First Niagara Bank.

The OCC has indicated that it has no outstanding supervisory concerns regarding KeyBank's policies and procedures, and that it is continuing to evaluate the application pending before it. KeyBank has committed to implement its policies and procedures at the combined organization, and the Board expects that they will be commensurate with the increased size and complexity of the combined organization. Based on the Board's consultations with the OCC and the information discussed above, KeyCorp appears capable of effectively implementing its policies, procedures, and programs across the combined organization to effectively serve all communities within the firm's geographic footprint, and of addressing any consumer compliance concerns or issues that may arise at the combined organization. The Board also expects KeyCorp to engage in activities to help meet community credit needs at a level commensurate with the expanded size and scope of the combined organization, consistent with safe and sound lending practices. In addition, KeyCorp should ensure that KeyBank complies with any commitments or conditions that the OCC may request or impose in connection with its action on the bank merger proposal.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. KeyCorp represents that the proposal would provide customers of the combined organization access to additional or expanded products and services that are not currently offered to First Niagara Bank customers, including deposit, online banking, mobile banking and alternative loan products, several of which are designed specifically for LMI customers. KeyCorp states that customers of the combined organization would also have access to First Niagara Bank's insurance and indirect auto lending products that are not currently offered to KeyBank customers. KeyCorp represents that the proposal would not result in significant reductions in products or services currently offered by the institutions, and notes that KeyBank would waive various account fees for a period of time to give First Niagara Bank customers an opportunity to learn more about KeyBank's products.

KeyCorp represents that customers would benefit from the combined organization's enhanced lending capabilities. KeyCorp highlights KeyBank's commitment under the Plan to substantially increase its residential mortgage lending, small business and farm lending, and community development lending and investments. KeyCorp also represents that KeyBank would further enhance its community engagement efforts by (1) creating a product innovation fund to develop new products for urban and rural LMI communities, (2) conducting forums with community partners to educate consumers and small businesses regarding the bank's product offerings, and (3) adding a corporate responsibility officer in each of the organization's major markets.

KeyCorp further represents that as a result of the proposal, customers of the combined organization would have access to a substantially larger branch and ATM network. KeyCorp also states that the combined organization will explore offering, at First Niagara Bank's branches located in LMI communities, its array of "KeyBank Plus" services, which include hassle-free checking accounts, small-dollar loan products, reasonably priced check cashing services, a first-time homebuyer product, an unsecured revolving credit line, first-time savings accounts, and financial education programs.[41]

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, 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 KeyCorp, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."[42]

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.[43] 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.[44]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system, including the public comments.[45] Both the acquirer and target are predominantly engaged in retail commercial banking activities.[46] The pro forma

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[41] Some commenters also expressed concerns about potential job losses in upstate New York that would result from the proposal. KeyCorp represents that it has taken steps to minimize job losses in affected markets, including designating First Niagara's existing loan servicing unit, located in Buffalo, to serve as KeyCorp's underwriting, fulfillment, and portfolio management platforms, and instituting an enterprise-wide hiring freeze for certain non-client facing positions in order to maximize the number of retention opportunities available to First Niagara employees. This concern, however, is outside of the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the BHC Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973); *see also*, *e.g.*, *Wells Fargo & Company*, 82 *Federal Reserve Bulletin* 445 (1996); and *Community Bank System, Inc.*, FRB Order No. 2015-34 (November 18, 2015).

[42] Dodd-Frank Act §604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601 (2010), codified at 12 U.S.C. § 1842(c)(7).

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

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

[45] Two commenters generally raised financial stability concerns, asserting that the proposal is further evidence that the federal banking agencies are not giving financial stability considerations enough weight.

[46] As noted above, KeyCorp primarily accepts retail deposits and engages in retail and commercial banking, commercial leasing, investment management, consumer finance, and investment banking products and services.

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.

Requests for Public Hearings or Meetings and Extension of Comment Period

Some commenters requested that the Board hold public hearings or public meetings on the application. The BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application.[47] 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 formal or informal hearing or other proceeding on an application,[48] 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 submit comments on the proposal. As noted above, the Board extended the initial period for public comment to accommodate the public interest in this proposal, providing interested persons until January 31, 2016, a total period of 62 days, to submit written comments. 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 public hearing or meeting. In addition, the requests do not demonstrate why written comments do not present the commenters' views adequately or why a hearing or meeting 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 or meeting is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

In addition, one commenter requested a further extension of the comment period of the proposal. The Board has already provided for an extended comment period of 62 days. During this time, a number of commenters, including the requester, submitted detailed comments in writing regarding 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.[49] The commenter's request for additional time does not identify circumstances that would warrant a further extension of the public comment period for this proposal. Accordingly, the Board has determined not to extend further the public comment period.

First Niagara accepts retail deposits and engages in mortgage lending, consumer lending, and business loans. In each of its activities, KeyCorp has, and as a result of the proposal would continue to have, a small share on a nationwide basis, and numerous competitors would remain.

[47] 12 U.S.C. § 1842(b)(1); 12 CFR 225.16(e).

[48] 12 CFR 225.16(e).

[49] 12 CFR 262.25(b)(2); 12 CFR 225.16(c)(2).

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposal should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. Approval of this proposal is specifically conditioned on compliance by KeyCorp with all the conditions set forth 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 Cleveland, acting under delegated authority.

By order of the Board of Governors, effective July 12, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

KeyCorp/First Niagara Banking Markets in New York
Consistent with Board Precedent and DOJ Bank Merger Guidelines

Bank	Rank	Amounts of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Albany, New York – includes Albany, Fulton, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, and Washington counties; Austerlitz, Canaan, Chatham, Claverack, Ghent, Hillsdale, Kinderhook, New Lebanon, Stockport, and Stuyvesant towns in Columbia County; and Ashland, Athens, Cairo, Coxsackie, Durham, Greenville, Jewett, New Baltimore, Prattsville, and Windham towns in Greene County.						
KeyCorp Pre-Consummation	1	$5.5B	23.43			
First Niagara	3	$2.7B	11.45			
KeyCorp Post-Consummation	1	$8.3B	34.87	1620	536	24
Binghamton, New York-Pennsylvania – includes Broome, Chenango, Otsego, and Tioga counties, all in New York; and Friendsville, Great Bend, Hallstead, Lanesboro, Little Meadows, New Millford, Oakland, Susquehanna Depot, and Thompson boroughs, and Apolacon, Choconut, Forest Lake, Franklin, Great Bend, Harmony, Jackson, Liberty, Middletown, New Milford, Oakland, Silver Lake, and Thompson townships in Susquehanna County, Pennsylvania.						
KeyCorp Pre-Consummation	11	$137.3M	2.22			
First Niagara	5	$339.9M	5.51			
KeyCorp Post-Consummation	4	$447.2M	7.73	1861	24	11
Franklin, New York – includes Franklin County; and Crown Point, Keene, Minerva, Newcomb, North Elba, North Hudson, St. Armand, Schroon, and Ticonderoga towns in Essex County.						
KeyCorp Pre-Consummation	7	$45.5M	5.05			
First Niagara	4	$71.1M	7.89			
KeyCorp Post-Consummation	3	$116.6M	12.94	2573	80	6
Ithaca, New York – includes Tompkins County; Cortland city, Cortlandville, Harford, Lapeer, and Virgil towns in Cortland County; and Catherine, Cayuta, and Hector towns in Schuyler County.						
KeyCorp Pre-Consummation	11	$21.2M	0.90			
First Niagara	2	$224.8M	9.57			
KeyCorp Post-Consummation	2	$246.0M	10.47	3057	18	11

(continued on next page)

Appendix—*continued*

KeyCorp/First Niagara Banking Markets in New York
Consistent with Board Precedent and DOJ Bank Merger Guidelines—*continued*

Bank	Rank	Amounts of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Jamestown, New York-Pennsylvania – includes Chautauqua County, New York; and Clarendon borough, Warren city, and Conewango, Elk, Farmington, Glade, Mead, and Pine Grove townships in Warren County, Pennsylvania.						
KeyCorp Pre-Consummation	5	$147.9M	8.54			
First Niagara	4	$258.6M	14.93			
KeyCorp Post-Consummation	1	$406.5M	23.46	1694	254	12
Metro New York City, New York-New Jersey-Connecticut-Pennsylvania – includes Fairfield County; Bethlehem, Bridgewater, Canaan, Cornwall, Goshen, Kent, Litchfield, Morris, New Milford, North Canaan, Plymouth, Roxbury, Salisbury, Sharon, Thomaston, Warren, Washington, Watertown, and Woodbury towns in Litchfield County; Ansonia, Beacon Falls, Bethany, Cheshire, Derby, Hamden, Meriden, Middlebury, Milford, Naugatuck, North Haven, Orange, Oxford, Prospect, Seymour, Southbury, Wallingford, Waterbury, Wolcott, and Woodbridge in New Haven County, all in Connecticut; Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster and Westchester counties; Hudson city, Ancram, Clermont, Copake, Gallatin, Germantown, Greenport, Livingston, and Taghkanic towns in Columbia County; Catskill, Halcott, Hunter, and Lexington towns in Greene County, all in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union counties; Pemberton and Wrightstown boroughs, Bass River, New Hanover, North Hanover, Pemberton, Shamong, Southampton, Tabernacle, Washington, and Woodland townships in Burlington County; Hightstown, Hopewell, Pennington, Princeton boroughs, East Windsor, Ewing, Hopewell, Lawrence, Princeton, Robbinsville, and West Windsor townships in Mercer County; Washington borough, Belvidere and Hackettstown towns, Allamuchy, Blairstown, Franklin, Frelinghuysen, Greenwich, Hardwick, Harmony, Hope, Independence, Knowlton, Liberty, Lopatcong, Mansfield, Oxford, Washington, and White townships in Warren County, all in New Jersey; Pike County; Delaware Water Gap, East Stroudsburg, Mount Pocono, and Stroudsburg boroughs, Barrett, Coolbaugh, Middle Smithfield, Paradise, Pocono, Price, Smithfield, and Stroud townships in Monroe County; and Hawley borough, Berlin, Damascus, Dreher, Lebanon, Manchester, Oregon, Palmyra, Paupack, Salem, and Sterling townships in Wayne County, all in Pennsylvania.						
KeyCorp Pre-Consummation	42	$2.4B	0.19			
First Niagara	36	$3.0B	0.15			
KeyCorp Post-Consummation	27	$5.4B	0.34	1300	0	241
Rochester, New York – includes Chemung, Livingston, Monroe, Ontario, Seneca, Steuben, Wayne and Yates counties; Alfred, Almond, Andover, Birdsall, Burns, Grove, Independence, Ward, Wellsville, West Almond, and Willing towns in Allegany County; Bergen, Bethany, Byron, Elba, Le Roy, Pavilion, and Stafford towns in Genesee County; Albion, Barre, Carlton, Clarendon, Gaines, Kendall, Murray, and Yates towns in Orleans County; Dix, Montour, Orange, Reading, and Tyrone towns in Schuyler County; and Castile, Covington, Gainesville, Genesee Falls, Middlebury, Perry, and Warsaw towns in Wyoming County.						
KeyCorp Pre-Consummation	8	$1.0B	5.25			
First Niagara	6	$1.4B	7.06			
KeyCorp Post-Consummation	2	$2.4B	12.31	1079	74	26
Saint Lawrence, New York – includes Saint Lawrence County.						
KeyCorp Pre-Consummation	3	$103.4M	11.04			
First Niagara	5	$63.0M	6.73			
KeyCorp Post-Consummation	2	$166.4M	17.77	2734	149	8
Syracuse, New York – includes Cayuga, Onondaga and Oswego counties; Cincinnatus, Cuyler, Freetown, Homer, Marathon, Preble, Scott, Solon, Taylor, Truxton, and Willet towns in Cortland County; and Cazenovia, DeRuyter, Fenner, Georgetown, Lenox, Lincoln, Nelson, Smithfield, and Sullivan towns in Madison County.						
KeyCorp Pre-Consummation	3	$1.4B	11.9			
First Niagara	4	$1.1B	9.13			
KeyCorp Post-Consummation	2	$2.6B	21.03	1395	218	23
Utica-Rome, New York – includes Herkimer and Oneida counties; and Oneida city, Brookfield, Eaton, Hamilton, Lebanon, Madison, and Stockbridge towns in Madison County.						
KeyCorp Pre-Consummation	9	$63.8M	1.41			
First Niagara	7	$425.9M	9.45			
KeyCorp Post-Consummation	7	$489.7M	10.86	1349	27	10
Watertown, New York – includes Jefferson and Lewis counties.						
KeyCorp Pre-Consummation	3	$236.4M	17.31			
First Niagara	7	$31.6M	2.31			
KeyCorp Post-Consummation	2	$268.0M	19.62	2636	80	10

Data and rankings are as of June 30, 2015. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted for each market includes thrifts.

Huntington Bancshares Incorporated
Columbus, Ohio

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2016–13 (July 29, 2016)

Huntington Bancshares Incorporated ("Huntington"), Columbus, Ohio, a financial holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] has requested the Board's approval under section 3 of the BHC Act[2] to merge with FirstMerit Corporation ("FirstMerit") and thereby indirectly acquire FirstMerit Bank, N.A. ("FirstMerit Bank"), both of Akron, Ohio.[3] Following the proposed acquisition, FirstMerit Bank would be merged into Huntington's subsidiary bank, The Huntington National Bank ("Huntington Bank"), also of Columbus.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *FederalRegister* 14445 (March 17, 2016)).[5] The Board extended the initial period for public comment to accommodate public interest in this proposal, providing interested persons until May 16, 2016, a total of more than 65 days, to submit written comments (81 *FederalRegister* 25405 (April 28, 2016)). The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Huntington, with consolidated assets of approximately $71.1 billion, is the 40th largest insured depository organization in the United States, controlling approximately $53.9 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[6] Huntington controls Huntington Bank, which operates in Florida, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, and West Virginia. Huntington Bank is the third largest insured depository institution in Ohio, controlling deposits of approximately $35.6 billion, which represent 11.9 percent of the total deposits of insured depository institutions in that state.[7] Huntington Bank is the sixth largest insured depository institution in Michigan, controlling deposits of approximately $9.5 billion, which represent approximately 5 percent of the total deposits of insured depository institutions in that state. Huntington Bank is the 19th largest insured depository institution in Pennsylvania, controlling deposits of approximately $3.2 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

FirstMerit, with consolidated assets of approximately $25.5 billion, is the 66th largest insured depository organization in the United States, controlling approximately $19.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. FirstMerit controls FirstMerit Bank, which operates in Illinois, Michigan, Ohio, Pennsylvania, and Wisconsin. FirstMerit Bank is the seventh largest insured depository institution in Ohio,

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1 12 U.S.C. § 1841*et seq.*

2 12 U.S.C. § 1842.

3 The applicant would effect the acquisition by merging West Subsidiary Corporation, a wholly owned subsidiary of Huntington, with and into FirstMerit, with FirstMerit as the survivor. FirstMerit would then merge with and into Huntington, with Huntington as the survivor.

4 The merger of FirstMerit Bank into Huntington Bank is subject to the approval of the Office of the Comptroller of the Currency ("OCC") pursuant to section 18(c) of the Federal Deposit Insurance Act.

5 12 CFR 262.3(b).

6 Asset and deposit data are as of June 30, 2015, unless otherwise noted.

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

controlling deposits of approximately $10.9 billion, which represent 3.6 percent of the total deposits of insured depository institutions in that state. FirstMerit Bank is the ninth largest insured depository institution in Michigan, controlling deposits of approximately $5.1 billion, which represent 2.7 percent of the total deposits of insured depository institutions in that state. In addition, FirstMerit Bank is the 127th largest insured depository institution in Pennsylvania, controlling deposits of approximately $227 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Huntington would become the 34th largest insured depository organization in the United States, with consolidated assets of approximately $96.6 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. Huntington would control consolidated deposits of approximately $73.6 billion, which represent less than 1 percent of the total deposits of insured depository institutions in the United States. Huntington would become the largest insured depository organization in Ohio, controlling deposits of approximately $46.5 billion, which represent 15.5 percent of the total amount of deposits of insured depository institutions in that state. Huntington would remain the sixth largest insured depository organization in Michigan, controlling deposits of approximately $14.6 billion, which represent 7.7 percent of the total amount of deposits of insured depository institutions in that state. In addition, Huntington would remain the 19th largest insured depository organization in Pennsylvania, controlling deposits of approximately $3.4 billion, which represent less than 1 percent of the total amount of 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 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.[8] 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.[9] In addition, the Board may not approve an interstate application if the bank holding company controls or would upon consummation of the proposed transaction control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, the bank holding company would upon consummation control 30 percent or more of the total deposits of insured depository institutions in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.[10]

For purposes of the BHC Act, the home state of both Huntington and FirstMerit Bank is Ohio.[11] FirstMerit Bank also operates in Illinois, Michigan, Pennsylvania, and Wisconsin.

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8 12 U.S.C. § 1842(d)(1)(A).

9 12 U.S.C. § 1842(d)(1)(B).

10 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).

11 *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.

Huntington is well capitalized and well managed under applicable law and has a satisfactory rating under the Community Reinvestment Act of 1977 ("CRA").[12] Illinois and Wisconsin have five-year age requirements that do not apply to Huntington's acquisition of FirstMerit.[13] Michigan, Ohio, and Pennsylvania do not have minimum age requirements.[14]

On consummation of the proposed transaction, Huntington would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Ohio imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[15] The combined organization would control approximately 15.5 percent the total amount of deposits of insured depository institutions in Ohio. 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 or tend to create a monopoly in any banking 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 communities to be served.[16]

Huntington and FirstMerit have subsidiary banks that compete directly in 27 banking markets in Michigan, Ohio, and Pennsylvania. The Board has considered the competitive effects of the proposal in the banking markets in which Huntington Bank and FirstMerit Bank compete. In particular, the Board has considered the number of competitors that would remain in the banking markets; the relative shares of total deposits in insured depository institutions in the markets ("market deposits") that Huntington would control;[17] the concentration levels of market deposits and the increase in these levels as measured by the HerfindahlHirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[18] other characteristics of the markets; and, as discussed below, commitments made by Huntington

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12 12 U.S.C. § 2901 *et seq.*

13 Illinois and Wisconsin law both impose minimum age requirements only on the acquisition of a bank organized under the laws of Illinois or Wisconsin or that maintains its main office in Illinois or Wisconsin. 205 Ill. Comp. Stat. 5/21.2(a); Wis. Stat. §221.0901(8). These age requirements are not applicable to the proposed transaction because FirstMeritBank's main office is located in Ohio.

14 *See* Mich. Comp. Laws § 487.13702; Ohio Rev. Code Ann. § 1115.05; 7 Pa. Stat. Ann. § 1604.

15 Ohio Rev. Code Ann. §1115.05(B)(1)(a). Neither Michigan nor Pennsylvania imposes a limit on the total amount of in-state deposits that a single banking organization may control.

16 12 U.S.C. § 1842(c)(1).

17 Deposit and market share data are as of June 30, 2015, and unless otherwise noted are based on calculations in which the deposits of thrift institutions are included at 50percent. 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 *FederalReserveBulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in market share calculations on a 50-percent weighted basis. *See, e.g.*, *FirstHawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

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

to divest branches in the Akron, Ashtabula County, and Canton banking markets, all in Ohio.

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 22 banking markets. On consummation, one banking market would become highly concentrated; eight banking markets would remain highly concentrated; 11 banking markets would remain moderately concentrated; and two banking markets would remain unconcentrated, as measured by the HHI. The change in the HHI in these markets generally would be small, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in most of these banking markets.[19]

Banking Markets Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Akron, Ashland County, Ashtabula County, and Canton banking markets, all in Ohio, and the Cadillac, Michigan, banking market warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines or would result in the market deposit share of Huntington equaling or exceeding 35 percent when using initial competitive screening data.

Markets Without Divestitures

Cadillac, Michigan, Banking Market. Huntington Bank is the seventh largest depository institution in the Cadillac banking market, controlling approximately $8.8 million in deposits, which represent 1.4 percent of market deposits.[20] FirstMerit Bank is the largest depository institution in the market, controlling approximately $223.2 million in deposits, which represent 36.0 percent of market deposits. On consummation, Huntington Bank would be the largest depository institution in the Cadillac banking market, controlling approximately $231.9 million in deposits, which would represent approximately 37.4 percent of market deposits. The HHI in this market would increase 102 points, from 2604 to 2706.

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 Cadillac banking market.[21] In particular, three credit unions exert a competitive influence in the Cadillac 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

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[19] These banking markets and the competitive effects of the proposal in these markets are described in the appendix.

[20] The Cadillac banking market is defined as Missaukee and Wexford counties, and Osceola County except Richmond, Hersey, Evart, and Orient townships, all in Michigan.

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

[22] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See, e.g.*, *BB&T Corporation*, FRB Order No. 2015-18 (July 7, 2015); *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *UnitedBankshares, Inc.*, (June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2d Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services*

limited lending done by credit unions to small businesses relative to commercial banks' lending levels.

This adjustment suggests that the resulting market concentration in the Cadillac banking market is less significant than would appear from the initial competitive screening data, which focused on commercial-bank and thrift competitors. After consummation, and adjusting to reflect competition from credit unions in the market, the market concentration level in the Cadillac banking market as measured by the HHI would increase by 87 points, from 2259 to 2346, and the market share of Huntington would increase to 34.7 percent. In addition to the three credit unions, five other insured depository institutions would remain in the market, including one insured depository institution with a market share of more than 25 percent.

Ashland County, Ohio, Banking Market. Huntington Bank is the second largest depository institution in the Ashland County banking market, controlling approximately $103.3 million in deposits, which represent 17.1 percent of market deposits.[23] FirstMerit Bank is the fourth largest depository institution in the market, controlling approximately $80.5 million in deposits, which represent 13.4 percent of market deposits. On consummation, Huntington Bank would be the largest depository institution in the Ashland County banking market, controlling approximately $183.8 million in deposits, which would represent approximately 30.5 percent of market deposits. The HHI in this market would increase 458 points, from 1422 to 1880.

The competitive effects in this market are mitigated by several factors that indicate that the increase in concentration in the Ashland County banking market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market. Two thrift institutions in the market have a commercial and industrial loan portfolio similar to those of commercial banks in the Ashland County banking market, as measured in terms of the ratios of those types of loans to total loans and assets.[24] The Board has concluded that deposits controlled by these institutions should be weighted at 100 percent in the market-share calculations.

In addition, three credit unions exert a competitive influence in the Ashland County 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.

With the deposits of both thrifts weighted at 100 percent and the three credit unions at 50 percent, the Ashland County banking market appears to be only moderately concen-

Group, Inc., 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *PassumpsicBancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *WachoviaCorporation*, 92 *Federal Reserve Bulletin* C183 (2006).

[23] The Ashland County banking market is defined as Ashland County, Ohio.

[24] 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. The Board previously has indicated, however, 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 100percent in market-share calculations. *See*, *e.g.*, *River Valley Bancorp*, FRBOrderNo. 2012-10 (October17,2012); *Regions Financial Corporation*, 93 *FederalReserve Bulletin* C16 (2007); and *Banknorth Group, Inc.*, *supra*.

trated, both before and after the transaction. Upon consummation of the merger, Huntington would control 27.3 percent of market deposits, the HHI would increase by 367 points, from 1190 to 1557, and six other insured depository institutions would remain in the market, including four insured depository institutions with market shares of approximately 10 percent or more.

Markets with Divestitures

Akron, Ohio, Banking Market. Huntington Bank is the fifth largest depository institution in the Akron banking market, controlling approximately $775.8 million in deposits, which represent 6.7 percent of market deposits.[25] FirstMerit Bank is the largest depository institution in the market, controlling approximately $3.9 billion in deposits, which represent 33.7 percent of market deposits. On consummation, Huntington Bank would be the largest depository institution in the Akron banking market, controlling approximately $4.7 billion in deposits, which would represent approximately 40.4 percent of market deposits. The HHI in this market would increase 450 points, from 1691 to 2141.

To mitigate the potentially adverse competitive effects of the proposal in the Akron banking market, Huntington has committed to divest one branch, accounting for a total of approximately $63.8 million in deposits, to a competitively suitable institution.[26] Other factors also mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Akron banking market. Six thrift institutions in the market have a commercial and industrial loan portfolio similar to those of commercial banks in the Akron banking market, as measured in terms of the ratios of those types of loans to total loans and assets. The Board has concluded that deposits controlled by these institutions should be weighted at 100 percent in the market-share calculations.

In addition, seven credit unions exert a competitive influence in the Akron 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.

Huntington also argues that the inclusion of certain deposits that are held at FirstMerit's main office, which is located in the Akron market, distorts the measures of the competitive effect of the proposal on the Akron market because those deposits have no relation to the

[25] The Akron banking market is defined as Summit County (minus Sagamore Hills, Northfield Center, Twinsburg, Richfield, and Boston townships, the villages adjoining these townships, and the cities of Twinsburg, Macedonia, and Hudson); Franklin, Ravenna, Charlestown, Paris, Brimfield, Rootstown, Edinburg, Palmyra, Suffield, Randolph, Atwater, and Deerfield townships, and the city of Kent in Portage County; Guilford, Wadsworth, and Sharon townships, and the city of Wadsworth in Medina County; Lawrence and Lake townships in Stark County; and Milton and Chippewa townships, and the villages adjoining these townships, in Wayne County, all in Ohio.

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

Akron market or cannot be used for lending or for any other purpose.[27] In conducting its competitive analysis in previous cases, the Board generally has not adjusted its market share calculations to exclude out-of-market deposits because all deposits are typically available to support lending and other banking activities at any location and the deposits maintained in a specific market represent a firm's ability to compete in that market. The Board, however, has adjusted market deposits held by a party to the proposal to exclude specific types of out-of-market deposits in rare situations when evidence supports a finding that the out-of-market deposits are subject to legal or other restrictions that constrain an organization's ability to use those deposits to support its general banking activities and that there are data available to make comparable adjustments to the market shares for other participants.[28]

FirstMerit has some out-of-market deposits that are centrally booked at its main office that are subject to legal or other restrictions that constrain the organization's ability to lend on such deposits. These deposits have been generated from various government and municipal entities located outside of the Akron market, involve escrow accounts for mortgages made outside of the Akron market, and include trust account deposits that are swept into FirstMerit's deposit accounts overnight before being swept back into customer accounts located outside of the Akron market. For the deposits in each of these categories, FirstMerit is limited by law, contract, or otherwise in its ability to use these specific types of out-of-market deposits to support its general banking activities.[29]

To account for the possibility that other market competitors might maintain similar deposits in the Akron market, the Board excluded from the two largest branches of competitors in the Akron market the same percentage of deposits that were excluded from FirstMerit's main office deposits in Akron. After making these adjustments, accounting for the branch divestiture, and weighting the deposits of the thrifts at 100 percent and the credit unions at 50 percent, Huntington would control approximately 38.0 percent of market deposits, and the HHI would increase by 382 points to a level of 1930.

The Board also has examined other aspects of the structure of the Akron market that mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Akron banking market. After consummation of the proposal, Huntington would face competition from 27 other depository institutions in the Akron market, including two large, national depository institutions that each would control more than 12 percent of market deposits and two other large, regional competitors that each would control more than 6 percent of deposits. The presence of these viable competitors suggests that Huntington would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on Huntington in the Akron market.

Moreover, recent entry and expansionary activity suggests that the market is attractive to potential competitors. One depository institution has entered the Akron market de novo since 2015, two competitors have entered the market through acquisition since 2012, and another existing competitor opened a new branch in 2015.

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27 Huntington seeks to exclude $982 million of FirstMerit's main office deposits, consisting of wholesale/brokered certificates of deposit, a master Money Market Account, collateralized public deposits, trust account deposits that are swept into FirstMerit's accounts overnight and are swept back into customers' investment accounts by day, and out-of-market mortgage escrow deposits.

28 *See First Security Corp.*, 86 *Federal Reserve Bulletin* 122, 125–27 (2000).

29 Ohio law requires depository institutions that accept Ohio government deposits to collateralize such deposits with eligible securities at an aggregate market value equal to at least 105 percent of the total amount of the public depositor's uninsured public deposits. Ohio Rev. Code Ann. § 135.18.

Canton, Ohio, Banking Market. Huntington Bank is the largest depository institution in the Canton banking market, controlling approximately $1.6 billion in deposits, which represent 27.1 percent of market deposits.[30] FirstMerit Bank is the second largest depository institution in the market, controlling approximately $1.4 billion in deposits, which represent 23.2 percent of market deposits. On consummation, Huntington Bank would remain the largest depository institution in the Canton banking market, controlling approximately $3.0 billion in deposits, which would represent approximately 50.3 percent of market deposits. The HHI in this market would increase 1258 points, from 1660 to 2918.

To mitigate the potentially adverse competitive effects of the proposal in the Canton banking market, Huntington has committed to divest to a competitively suitable institution 10 branches, accounting for a total of at least $613 million in deposits. Other factors also mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Canton banking market. Two thrift institutions in the market have a commercial and industrial loan portfolio similar to those of commercial banks in the Canton banking market, as measured in terms of the ratios of those types of loans to total loans and assets. The Board has concluded that deposits controlled by these institutions should be weighted at 100 percent in the market-share calculations.

In addition, 11 credit unions exert a competitive influence in the Canton 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.

The Board also has considered Huntington's argument that inclusion of certain public deposits that are held at a large Huntington Bank branch in Canton would distort the measures of the competitive effect of the proposal on the Canton market. For the same reasons provided in the Akron market, the government deposits from entities and municipalities located outside of the Canton market held by Huntington have been excluded from the analysis because these deposits are subject to a legal restriction that constrains Huntington's ability to support its general banking activities. Because the largest branch of Huntington's and FirstMerit's competitors in the market is significantly smaller than Huntington's branch where these government deposits are held, no deposits were excluded from these competitors' branches in assessing their market share.[31] After excluding these out-of-market government deposits, accounting for the branch divestitures, and weighting the deposits of the thrifts at 100 percent and the credit unions at 50 percent, Huntington would control approximately 36.4 percent of market deposits and the HHI would increase by 351 points to a level of 1790.

The Board also has examined other aspects of the structure of the Canton market that mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Canton banking market. After consummation of the proposal, Huntington would face competition from 17 other depository institutions, including two large, national depository institutions that each would control approximately 10 percent of market deposits. The presence of these viable competitors suggests that Huntington would have limited ability to unilaterally offer less attractive

[30] The Canton banking market is defined as Carroll County; Marlboro, Lexington, Jackson, Plain, Nimishillen, Washington, Tuscarawas, Perry, Canton, Osnaburg, Paris, Sugar Creek, Bethlehem, Pike, and Sandy townships in Stark County; and Smith township in Mahoning County, all in Ohio.

[31] *See First Security Corp.*, 86 *Federal Reserve Bulletin* 122, 125–27 (2000).

terms to consumers and that the competitors are able to exert competitive pressure on Huntington in the Canton market.

Moreover, recent entry and expansionary activity suggests that the market is attractive to potential competitors. Two depository institutions have entered the Canton market de novo since 2011, and two other existing competitors have opened new branches since 2011.

Ashtabula County, Ohio, Banking Market. Huntington Bank is the third largest depository institution in the Ashtabula County banking market, controlling approximately $168.4 million in deposits, which represent 17.6 percent of market deposits.[32] FirstMerit Bank is the fourth largest depository institution in the market, controlling approximately $165.1 million in deposits, which represent 17.3 percent of market deposits. On consummation, Huntington Bank would be the largest depository institution in the Ashtabula County banking market, controlling approximately $333.5 million in deposits, which would represent approximately 34.9 percent of market deposits. The HHI in this market would increase 608 points, from 1878 to 2486.

To mitigate the potentially adverse competitive effects of the proposal in the Ashtabula County banking market, Huntington has committed to divest two branches, accounting for a total of approximately $60.7 million in deposits, to a competitively suitable institution. One thrift institution in the market has a commercial and industrial loan portfolio similar to those of commercial banks in the Ashtabula County banking market, as measured in terms of the ratios of those types of loans to total loans and assets. The Board has concluded that deposits controlled by this institution should be weighted at 100 percent in the market-share calculations.

In addition, four credit unions exert a competitive influence in the Ashtabula County 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 two branch divestitures and weighting the deposits of the thrift at 100 percent and the four credit unions at 50 percent, Huntington would control approximately 25.6 percent of market deposits, the HHI would increase by 198 points to a level of 1741, and six other insured depository institutions would remain, including one insured depository institution with a market share of more than 25 percent.

Conclusion Regarding Competitive Effects

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

Based on all of the facts of record, including the proposed divestitures, and for the reasons explained above, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking markets in which Huntington and FirstMerit compete directly or in any other

[32] The Ashtabula County banking market is defined as Ashtabula County, Ohio.

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

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of the financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, 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 effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Huntington and Huntington Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange.[33] The asset quality, earnings, and liquidity of both Huntington Bank and FirstMerit Bank are consistent with approval, and Huntington 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.

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

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

The Board also has considered Huntington's plans for implementing the proposal. Huntington has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address all aspects of the post-integration process for this proposal. Huntington would implement its risk-management policies, procedures, and controls at the

[33] At the time of the merger, each share of FirstMerit common stock would be converted into a right to receive cash and Huntington common stock based on an exchange ratio. In addition, each share of certain noncumulative perpetual preferred FirstMerit stock would be converted into a right to receive substantially similar newly issued noncumulative perpetual preferred Huntington stock. Huntington has the financial resources to fund the transaction.

combined organization, and these are considered acceptable from a supervisory perspective. In addition, Huntington's and FirstMerit's management have the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Huntington plans to integrate FirstMerit's existing management and personnel in a manner that augments Huntington's management.[34]

Based on all the facts of record, including Huntington'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 Huntington and FirstMerit 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.[35] 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, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[36] 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.[37]

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

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

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[34] Huntington will increase the size of its board by four directors, who will be appointed from FirstMerit's board. In addition, Huntington will invite the members of the board of directors of FirstMerit to serve for three years as members of Huntington's Greater Akron-Canton Region Advisory Board.

[35] 12 U.S.C. § 1842(c)(2).

[36] 12 U.S.C. § 2901(b).

[37] 12 U.S.C. § 2903.

Summary of Public Comments on Convenience and Needs

The Board received comments from one commenter who objected to the proposal, alleging that Huntington made a disproportionately low number of home purchase loans, home improvement loans, and refinance loans to African American and Hispanic borrowers in the Akron and Cleveland, Ohio, areas and that FirstMerit made a disproportionately low number of home purchase loans, home improvement loans, and refinance loans to African American and Hispanic borrowers in the Akron, Ohio, area, as reflected in data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA")[38] for 2014. The commenter also criticized the rate at which Huntington and FirstMerit denied applications by African Americans and Hispanics, compared to that for non-Hispanic whites, for home purchase loans, home improvement loans, and refinance loans in the Akron and Cleveland areas, as reported under HMDA for 2014. In addition, the commenter also expressed concerns about the closure or consolidation of branches, primarily in the Akron, Canton, and Cleveland areas, alleging that the consolidations and closures would not have a countervailing public benefit and would have a disproportionate effect on LMI neighborhoods. A second commenter objected to the proposal, alleging that the combined organization would not offer as many products and services as FirstMerit currently offers, including credit monitoring and a rewards program, and that the proposal would result in job losses in the communities that the combined organization would serve. The commenter also questioned Huntington's commitment to serve the needs of Columbus, Ohio.

Business of the Involved Institutions and Response to Comments

Huntington and Huntington Bank offer a broad range of financial products and services to individual customers and businesses. Through its branch network in Florida, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, and West Virginia, Huntington Bank offers a variety of banking products and services to its customers, including retail consumer and commercial banking, consumer and commercial mortgage lending, treasury management, asset management, and trust and investment services.

FirstMerit and FirstMerit Bank also offer a wide range of financial products and services to individual customers and businesses, including consumer and commercial banking services, consumer and commercial mortgages and mortgage loan servicing, commercial lease financing, wealth management and financial consulting services, treasury management services, and insurance brokerage and agency services.

Huntington denies the commenters' allegations, arguing that its record of home mortgage lending does not disproportionately or discriminatorily affect African Americans or Hispanics. Huntington represents that its denial rates for African Americans and Hispanics in Akron and Cleveland reflect decisions based on collateral, credit history, incomplete credit applications, and debt-to-income ratios. Huntington also represents that it is firmly committed to all fair lending laws and regulations and actively engages in monitoring, testing, and maintaining internal controls to ensure compliance with fair lending laws and regulations. In addition, Huntington asserts that it offers many affordable mortgage loan programs and community development activities to increase affordable housing opportunities for LMI individuals and communities.

With respect to branch closures, Huntington represents that any closures will comply with the company's comprehensive internal branch opening, closing, relocation, and consolidation policy, which sets forth its obligations to comply with applicable laws and regula-

[38] 12 U.S.C. § 2801 *et seq.*

tions related to branch closures and consolidations. Huntington further represents that several branches that would be closed or consolidated are located near other branches in LMI census tracts to which customers' accounts would be transferred, and these closures or consolidations will not negatively affect the customer experience.

Huntington denies the commenter's allegations regarding FirstMerit's lending practices, arguing that FirstMerit does not engage in any discriminatory home mortgage lending practices. Huntington contends that FirstMerit's denial rates for African Americans and Hispanics in Akron reflect decisions based on collateral, credit history, and debt-to-income ratios. Huntington also represents that FirstMerit strives to serve all segments of its communities, including through home mortgage loan products designed to increase affordable housing opportunities for LMI individuals and communities.

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 public 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.[39] In this case, the Board considered the supervisory views of and information provided by the OCC.

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.[40] 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 HMDA, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution of the company's lending, 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; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and

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

[40] 12 U.S.C. § 2906.

amount of loans to low-, moderate-, middle-, and upper-income individuals;[41] (4) the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The 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.[42] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of Huntington Bank

Huntington Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of January 1, 2012 ("Huntington Bank Evaluation").[43] Huntington Bank received an "Outstanding" rating for the Lending Test and "High Satisfactory" ratings for the Investment Test and the Service Test. The Board has consulted with the OCC regarding the Huntington Bank Evaluation.

Examiners found that Huntington Bank's overall lending levels reflected excellent responsiveness to community credit needs. According to examiners, the bank's geographic distribution of loans was good, including loans to LMI neighborhoods. Examiners also found that the bank's distribution of borrowers was good, including loans to LMI borrowers and businesses of different sizes. Examiners noted that Huntington Bank's distribution of home mortgage loans and small business loans was good or excellent in a significant number of states and multistate MSAs. Examiners also found that Huntington Bank exhibited a very strong record of community development lending that otherwise elevated good lending performance to excellent lending performance. Huntington Bank's community development loans were made for a variety of purposes, with a particular focus on affordable housing, which reflected excellent responsiveness to local community needs.

Examiners found that Huntington Bank had a good level of qualified investment activity. Examiners noted that the investment activity of the bank and its subsidiary, Huntington Community Development Corporation, in low-income housing tax credit funds was especially responsive to the affordable housing needs of local communities. The bank extended

[41] 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).

[42] 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.

[43] The Huntington Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed home mortgage lending data, other CRA data (small loans to businesses and farms), community development loans, qualified investments, branching activities, and community development services from January 1, 2007, through December 31, 2011. The Huntington Bank Evaluation covered Huntington Bank's 38 assessment areas located in six states and four multistate metropolitan statistical areas ("MSAs"): Florida; Indiana; Michigan; Ohio; Pennsylvania; West Virginia; the Cincinnati–Middleton, Ohio–Kentucky–Indiana, MSA; the Steubenville–Weirton, Ohio–West Virginia, MSA; the Wheeling, West Virginia–Ohio, MSA; and the Youngstown–Warren–Boardman, Ohio–Pennsylvania, MSA. The HuntingtonBank Evaluation included a full-scope review of 13 of these assessment areas, including all four multistate MSAs. A limited-scope review was conducted in the remaining 25 assessment areas. The Huntington Bank Evaluation was released in March 2016.

qualified grants to local community organizations to support local community development initiatives, including affordable housing, financial education, and economic development throughout its assessment areas.

Examiners also noted that Huntington Bank's delivery systems provided good accessibility of products and services to areas and individuals of different income levels, including LMI communities and individuals. Examiners further noted that Huntington Bank's branches often offered extended hours, including on weekends. Examiners also found that the bank's community development service activity was good. Examiners indicated that Huntington Bank's officers and employees used their financial expertise to address a wide range of community needs, including by offering credit counseling, first-time home-buyer seminars, home foreclosure prevention workshops, and other financial education programs to LMI individuals.

Huntington Bank's Efforts Since the 2012 CRA Evaluation

Huntington Bank represents that it has continued its overall CRA performance in all of its assessment areas since the Huntington Bank Evaluation. Huntington Bank, through the Detroit Home Mortgage Fund initiative, has committed funds to help increase home ownership, property values, and reinvestment in Detroit by providing first and second mortgage loans to borrowers to purchase and renovate properties in Detroit. Huntington Bank also represents that it has made community development loans to support affordable housing in its communities, including commitments to provide investments and loans in Michigan and Ohio.

In addition, Huntington Bank represents that it provided a high volume of small business loans throughout its assessment areas and participated in state-sponsored programs designed to help small businesses and small farms that otherwise had difficulty obtaining loans to secure funding. Huntington Bank's management and employees have continued to dedicate volunteer hours to community service projects, including with community organizations that provide affordable housing, employment services, small business opportunities, financial education for children and LMI families, and home-buyer counseling.

CRA Performance of FirstMerit Bank

FirstMerit Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of June 17, 2013 ("FirstMerit Bank Evaluation").[44] FirstMerit Bank received "High Satisfactory" ratings for the Lending Test and Service Test and a "Low Satisfactory" rating for the Investment Test.[45]

Examiners noted that FirstMerit Bank's overall lending activity and distribution of loans by borrower income was good. Examiners also found that the bank's geographic distribu-

[44] The FirstMerit Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation period for the Lending Test was from January 1, 2008, to December 31, 2012, except for Illinois, which the bank entered in 2010 and for which the evaluation period was from January 1, 2010, through December 31, 2012. The evaluation period for the Investment Test and the Service Test was from November 17, 2008, through June 17, 2013, for Ohio and Pennsylvania and January 1, 2010, through June 17, 2013, for Illinois.

[45] The FirstMerit Bank Evaluation included a full-scope assessment review of the bank's assessment areas in the following geographies: the Akron, Ohio, MSA ("AkronMSA"); the Cleveland–Elyria, Ohio, MSA ("Cleveland MSA"); the Chicago–Naperville–Elgin, Illinois–Indiana–Wisconsin, MSA; and Lawrence County, Pennsylvania. A limited-scope review was performed in the Ashtabula County, Ohio, assessment area; the Canton–Massillon, Ohio, MSA; the Columbus, Ohio, MSA; the Mansfield, Ohio, MSA; the Sandusky, Ohio, assessment area; the Toledo, Ohio, assessment area; the Ashland County, Crawford County, Huron County, Seneca County, Holmes County, Knox County, and Wayne County, Ohio, assessment areas; and the Lake County, Illinois, assessment area.

tion of loans both overall and in Ohio was adequate throughout the bank's assessment areas. Examiners noted that FirstMerit Bank made an excellent level of community development loans in the Cleveland MSA and a good level of community development loans in the Akron MSA, both of which positively impacted the bank's Lending Test rating.

Examiners observed that the bank's overall level of community development investments was adequate. The bank's investments supported affordable housing projects and community development financial institutions. The bank's qualified grants and donations were used to support community development organizations that focused on affordable housing for LMI individuals, vocational training for low-income students, and first-time homebuyer and other financial literacy training.

Examiners found that the bank's delivery systems were readily accessible to all geographies and individuals of different income levels. Examiners also noted that the bank's branch distribution in the Akron MSA was excellent and that the percentage of branches in LMI census tracts exceeded the percentage of the population living in those geographies.

Branch Closures

As noted above, one commenter expressed concern that Huntington's planned branch consolidations and closures would have a negative effect on LMI communities. The federal banking supervisory agencies evaluate a bank's record of opening and closing branches, particularly branches located in LMI geographies or primarily serving LMI individuals, as part of the CRA examination process.[46] Specifically, examiners noted in the Huntington Bank Evaluation that Huntington's branch openings and closures did not adversely affect the accessibility of products and services to LMI individuals or in LMI geographies, and the closures were the result of reductions in branch activity. The Board also 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.[47] In addition, for the three proposed branch closures in LMI census tracts, the receiving branches to which customers' accounts would be transferred are all within half a mile from the proposed closing branch and will remain in LMI census tracts. Specifically, for the two proposed branches to be closed in low-income tracts, the communities will be served by existing FirstMerit Bank branches located less than 600 yards from the closing branches. Further, the moderate-income tract branch is primarily a commercial lending facility without retail walk-in traffic.

Views of the OCC

In its review of the proposal, the Board consulted the OCC regarding both institutions' CRA, consumer compliance, and fair lending records. The OCC is the primary supervisor of both Huntington Bank and FirstMerit Bank and is required to review the bank merger underlying this proposal, applying the same convenience and needs factor as must be applied by the Board. The Board also consulted with the OCC regarding Huntington Bank's and FirstMerit Bank's records of compliance with fair lending laws and regulations and the banks' policies and procedures relating to fair lending and other consumer protec-

[46] *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.

[47] *See* 12 U.S.C. § 1831r-1, as implemented by the Joint Policy Statement Regarding Branch Closings, 64 Fed. Reg. 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.

tion laws and regulations; as well as the lending records of both institutions. The OCC was provided with the comments received by the Board. The OCC is considering all of the comments, those received by the Board and those received jointly by the OCC and the Board, in connection with its review of the bank merger application.

The Board has taken these consultations with the OCC and the information discussed above into account in evaluating this proposal, including in considering whether Huntington has the experience and resources to ensure that the combined organization effectively implements policies and programs that allow the combined organization to effectively serve the credit needs of all the communities within the firm's assessment areas. The Board expects Huntington to ensure that Huntington Bank complies with any commitments or conditions that the OCC may request or impose in connection with its action on the bank merger proposal.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Huntington represents that as a result of the proposal, existing customers of FirstMerit would have access to a complement of products and services that is comparable to or more expansive than those currently available at FirstMerit, including corporate trust and retirement plan services, securities brokerage and investment advisory services, insurance products and insurance-related consultative services, and billing and invoice services. Moreover, Huntington asserts that customers of both institutions would benefit from a more expansive branch and ATM network, particularly Huntington Bank's branches located in grocery chains that offer longer hours and are usually open seven days a week.[48]

In addition, following its submission of the application, Huntington adopted a Community Plan ("Plan"), under which Huntington has committed to invest $16.1 billion in the communities that it serves, including LMI communities, over a five-year period, beginning in 2017. Huntington asserted that the Plan will provide an increase in lending to small businesses, bring jobs back to neighborhoods throughout Huntington and FirstMerit's combined footprint,[49] and provide more affordable housing opportunities. Under the Plan, Huntington has set targets for LMI communities and small businesses, including a plan to provide $5.7 billion in mortgage lending in LMI communities and to LMI borrowers and $6.6 billion for small businesses, including those in LMI communities. Huntington also intends to fund $3.7 billion in community development lending and investments and an additional $25 million in philanthropic investments. Huntington described plans to enhance its diversity and inclusion policies, expand its community engagement and

[48] As noted above, one commenter expressed concern that Huntington Bank would not offer the same credit monitoring service that FirstMerit offered. Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available, an insured depository institution is not required to provide any specific types of products or services. *See M&T Bank Corporation*, FRB Order No. 2015-27 at 15 n.37 (September 30, 2015).

[49] One commenter alleged that the proposal would result in job losses in the communities that the combined organization would serve. This concern is outside of the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the BHC Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973); *see*, *e.g.*, *Community Bank System, Inc.*, FRB Order No. 2015-34 (November 18, 2015); *Wells Fargo & Company*, 82 *Federal Reserve Bulletin* 445 (1996). Huntington has represented that it will establish an operations/call center within Akron and use reasonable best efforts to maintain employment levels in Akron that are consistent with FirstMerit's existing employment levels within two years of the merger's closing date.

marketing efforts, and add a total of 10 branches in LMI and majority-minority census tracts in Detroit, Cleveland, Chicago, Toledo, and one additional city to be determined.[50]

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, consultations with the OCC and CFPB, confidential supervisory information, information provided by Huntington, public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval. The Board expects Huntington to implement policies, programs, and activities that are commensurate with the increased size and complexity of the institution.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."[51]

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.[52] 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.[53]

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.[54] The pro forma organization would have

[50] Two community organizations asserted that the proposal should not be approved unless the Plan is included as a condition of the approval. 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.*, *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002); *Fifth Third Bancorp*, 80 *Federal Reserve Bulletin* 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas.

[51] Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601 (2010), codified at 12 U.S.C. § 1842(c)(7).

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

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

[54] Huntington primarily offers commercial and consumer banking services, mortgage banking services, commercial real estate lending, automobile financing, equipment leasing, community development investment, investment advisory and management services, fiduciary administration, trust services and operations, discount

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 significant risk to the financial system in the event of financial distress.

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.[55] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Huntington with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

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securities brokerage services, treasury management, capital market services (including corporate risk management and institutional sales, trading and underwriting — including municipal bond underwriting and private placement activities), as well as reinsuring credit life and disability insurance and selling other insurance and financial products and services as agent. FirstMerit offers primarily retail and commercial deposit and loan products, commercial lease financing and related services, insurance brokerage, financial consulting, trust operations, and fiduciary services. In each of its activities, Huntington has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

[55] A commenter requested that the Board hold public hearings or meetings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12U.S.C. § 1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also 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. As noted above, the Board extended the initial period for public comment to accommodate the public interest in this proposal, providing interested persons until May 16, 2016, a total period of 66 days, to submit written comments. In the Board's view, the commenter has 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 commenter's request did not identify disputed issues of fact material to the Board's decision that would be clarified by a public meeting. In addition, the request did not demonstrate why written comments do not present the commenter's views adequately or why a hearing or 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 or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

In addition, a commenter requested a further extension of the comment period for the proposal. As noted above, the Board already provided for an extended comment period of 66days. During this time, the commenters, including the requestor, submitted detailed comments in writing regarding the proposal. The Board's rules contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. The commenter's request for additional time to comment does not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the Board has determined not to extend further the comment period.

By order of the Board of Governors, effective July 29, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

Huntington/FirstMerit Banking Markets
Consistent with Board Precedent and DOJ Bank Merger Guidelines

Bank	Rank	Amounts of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Elkhart/Niles/South Bend, Indiana – Elkhart, St. Joseph, Kosciusko, LaGrange, and Marshall Counties; Davis, Oregon, Washington, and North Bend (including the entire city of Bass Lake) townships in Starke County, all in Indiana; Cass County; Buchanan, Niles and Bertrand townships in Berrien County; and the southern half of St. Joseph County, (Constantine, Florence, Sherman, Burr Oak, Mottville, White Pigeon, Sturgis, and Fawn River Townships), all in Michigan.						
Huntington Pre-Consummation	18	$60.2M	0.6			
FirstMerit	17	$69.2M	0.7			
Huntington Post-Consummation	13	$129.4M	1.3	1290	1	31
Alpena, Michigan – Alpena and Presque Isle Counties; Mitchell, Caledonia, Alcona, and Haynes townships of Alcona County; and Montmorency, Hillman, Avery, Loud, and Rust townships of Montmorency County, all in Michigan.						
Huntington Pre-Consummation	7	$1.1M	0.3			
FirstMerit	2	$95.3M	22.7			
Huntington Post-Consummation	2	$96.4M	23.0	1894	13	6
Bay City-Saginaw, Michigan – Arenac County (except Mason, Turner, and Whitney townships); Bay and Saginaw Counties; and Tuscola County (except Elmwood, and Elkland townships), all in Michigan.						
Huntington Pre-Consummation	7	$134.1M	3.8			
FirstMerit	1	$766.6M	21.7			
Huntington Post-Consummation	1	$900.7M	25.5	1409	165	18
Calhoun County, Michigan – Calhoun County, Michigan.						
Huntington Pre-Consummation	13	$4.6M	0.5			
FirstMerit	8	$24.6M	2.6			
Huntington Post-Consummation	7	$29.2M	3.1	1889	2	12
Detroit, Michigan – Oakland, Macomb, Wayne, Lapeer, Genesee, Washtenaw, St. Clair, Livingston, Lenawee, and Shiawassee Counties; Monroe County (except Whiteford, Bedford, and Erie townships); and Sanilac County (except Greenleaf, Austin, Argyle, Moore, Minden, Wheatland, Delaware, and Forester townships); all in Michigan.						
Huntington Pre-Consummation	6	$5.7B	4.5			
FirstMerit	11	$2.5B	2.0			
Huntington Post-Consummation	5	$8.2B	6.5	1468	18	55
Gaylord, Michigan – Oscoda and Otsego Counties; and Vienna, Briley, and Albert townships of Montmorency County, all in Michigan.						
Huntington Pre-Consummation	8	$8.6M	1.8			
FirstMerit	3	$79.3M	16.0			
Huntington Post-Consummation	3	$87.9M	17.8	2046	56	7
Gladwin-Midland, Michigan – Gladwin and Midland Counties, both in Michigan.						
Huntington Pre-Consummation	8	$21.2M	1.5			
FirstMerit	7	$23.5M	1.7			
Huntington Post-Consummation	5	$44.6M	3.2	4809	5	7
Grand Rapids, Michigan – Allegan, Barry, Ionia, and Kent Mecosta, Montcalm, Muskegon, Newaygo, Oceana, and Ottawa Counties; Newkirk, Dover, Ellsworth, Cherry Valley, Pinona, Yates, and Chase townships of Lake County; Richmond, Evart, Hersey, and Orient townships of Osceola County; all in Michigan.						
Huntington Pre-Consummation	2	$2.7B	11.6			
FirstMerit	30	$46.1M	0.2			
Huntington Post-Consummation	2	$2.7B	11.8	935	4	33

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Appendix—*continued*

Huntington/FirstMerit Banking Markets
Consistent with Board Precedent and DOJ Bank Merger Guidelines—*continued*

Bank	Rank	Amounts of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Jackson, Michigan – Jackson County, Michigan.						
Huntington Pre-Consummation	11	$12.3M	0.9			
FirstMerit	2	$297.9M	22.0			
Huntington Post-Consummation	2	$310.2M	22.9	1861	40	12
Kalamazoo-Battle Creek, Michigan – Kalamazoo and Van Buren Counties; Flowerfield, Park, Mendo, Leonidas, Fabius, Lockport, Nottawa and Colon townships of St. Joseph County, all in Michigan.						
Huntington Pre-Consummation	11	$98.6M	2.6			
FirstMerit	17	$25.1M	0.6			
Huntington Post-Consummation	10	$123.7M	3.2	1309	3	18
Lansing, Michigan – Clinton, Eaton, and Ingham Counties, all in Michigan.						
Huntington Pre-Consummation	18	$37.2M	0.7			
FirstMerit	6	$475.1M	8.6			
Huntington Post-Consummation	5	$512.3M	9.3	897	12	21
Petoskey, Michigan – Banks, Central Lake, Echo, Jordan and Warner townships of Antrim County; and Charlevoix, Cheboygan, and Emmet Counties, all in Michigan.						
Huntington Pre-Consummation	8	$119.1M	7.9			
FirstMerit	9	$71.4M	4.7			
Huntington Post-Consummation	4	$190.5M	12.6	1255	75	10
Roscommon, Michigan – Crawford and Roscommon Counties, both in Michigan.						
Huntington Pre-Consummation	6	$19.5M	4.6			
FirstMerit	3	$43.0M	10.1			
Huntington Post-Consummation	3	$62.5M	14.7	3014	94	5
Sault Sainte Marie, Michigan – Luce, Chippewa, and Mackinac Counties, all in Michigan.						
Huntington Pre-Consummation	5	$43.5M	6.7			
FirstMerit	6	$16.4M	2.5			
Huntington Post-Consummation	4	$59.9M	9.2	2464	34	6
Traverse City, Michigan – Antrim County (except Banks, Central Lake, Echo, Jordan, and Warner townships); Benzie, Grand Traverse, Kalkaska, Leelanau, and Arcadia Counties; Pleasanton, Springdale, Cleon, Maple Grove, and Marilla townships of Manistee County; all in Michigan.						
Huntington Pre-Consummation	3	$453.6M	15.1			
FirstMerit	11	$59.1M	2.0			
Huntington Post-Consummation	3	$512.7M	17.1	1395	59	13
Cleveland, Ohio – Cuyahoga, Lake, Lorain, and Geauga Counties; Sagamore Hills, Northfield Center, Twinsburg, Richfield, and Boston townships, the villages surrounding these townships, and the cities of Macedonia, Twinsburg and Hudson in Summit County; Homer, Harrisville, Westfield, Spencer, Chatham, Lafayette, Montville, Litchfield, York, Medina, Granger, Liverpool, Brunswick Hills and Hinckley townships, and the cities of Medina and Brunswick in Medina County; Mantua, Hiram, Nelson, Shalersville, Freedom, and Windham townships, and the cities of Aurora and Streetsboro in Portage County; and the city of Vermilion (not whole township) in Erie County, all in Ohio.						
Huntington Pre-Consummation	4	$5.1B	8.4			
FirstMerit	6	$3.9B	6.5			
Huntington Post-Consummation	2	$9.0B	14.9	1518	110	35
Columbus, Ohio – Franklin, Delaware, Fairfield, Hocking, Licking, Madison, Morrow, Pickaway and Union Counties; and Perry County, (minus Harrison township), all in Ohio.						
Huntington Pre-Consummation	1	$17.4B	31.4			
FirstMerit	10	$657.2M	1.2			
Huntington Post-Consummation	1	$18.1B	32.6	1830	75	54
Dover-New Philadelphia, Ohio – Tuscarawas and Harrison Counties; and Salt Creek, Paint, Berlin, Walnut Creek and Clark townships in Holmes County, all in Ohio.						

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Appendix—*continued*

Huntington/FirstMerit Banking Markets
Consistent with Board Precedent and DOJ Bank Merger Guidelines—*continued*

Bank	Rank	Amounts of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Huntington Pre-Consummation	1	$378.6M	20.0			
FirstMerit	16	$3.9M	.2			
Huntington Post-Consummation	1	$382.5M	20.2	1190	9	17
Toledo, Ohio – Lucas, Fulton and Ottawa Counties; and Wood County (minus Fostoria city), all in Ohio.						
Huntington Pre-Consummation	1	$2.5B	24.3			
FirstMerit	13	$91.8M	0.9			
Huntington Post-Consummation	1	$2.6B	25.2	1469	43	24
Richland County, Ohio – Richland County, Ohio.						
Huntington Pre-Consummation	9	$38.4M	2.2			
FirstMerit	5	$134.2M	7.7			
Huntington Post-Consummation	5	$172.6M	9.9	1759	34	13
Wayne-West Holmes, Ohio – Congress, Canaan, Chester, Wayne, Green, Baughman, Plain, Wooster, East Union, Sugar Creek, Clinton, Franklin, Salt Creek and Paint townships, and the city of Wooster in Wayne County; and Washington, Ripley, Prairie, Knox, Monroe, Hardy, Richland, Killbuck and Mechanic townships in Holmes County, all in Ohio.						
Huntington Pre-Consummation	12	$27.7M	1.4			
FirstMerit	3	$312.6M	15.6			
Huntington Post-Consummation	2	$340.3M	17.0	1405	43	13
Pittsburgh, Pennsylvania – Allegheny, Armstrong, Beaver, Butler, Greene, Lawrence, Washington and Westmoreland Counties; and Fayette County (minus Point Marion borough and Springhill township), all in Pennsylvania.						
Huntington Pre-Consummation	5	$3.0B	2.6			
FirstMerit	27	$227.0M	0.2			
Huntington Post-Consummation	5	$3.2B	2.8	2847	1	49

Data are as of June 30, 2015. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted in each market includes thrift institutions.

Chemical Financial Corporation
Midland, Michigan

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2016–14 (August 8, 2016)

Chemical Financial Corporation ("Chemical"), Midland, Michigan, a financial holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] has requested the Board's approval under section 3 of the BHC Act[2] to merge with Talmer Bancorp, Inc. ("Talmer"), and thereby indirectly acquire Talmer Bank and Trust ("Talmer Bank"), both of Troy, Michigan.

In addition, Chemical's subsidiary state member bank, Chemical Bank, Midland, Michigan, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with Talmer Bank, with Chemical Bank as the surviving entity.[3] Chemical Bank also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the main office and branches of Talmer Bank.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 20383 (April 7, 2016)).[5] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General and a copy of the request has been provided to the Federal Deposit Insurance Corporation ("FDIC").

Chemical, with consolidated assets of approximately $9.3 billion, is the 126th largest insured depository organization in the United States.[6] Chemical Bank controls approximately $7.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Chemical controls Chemical Bank and operates only in Michigan. Chemical Bank is the eighth largest insured depository institution in Michigan, with deposits representing 3.8 percent of the total deposits of insured depository institutions in that state.

Talmer, with consolidated assets of approximately $6.7 billion, is the 169th largest insured depository organization in the United States. Talmer currently controls approximately $5.2 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Talmer controls Talmer Bank, which operates in Illinois, Indiana, Michigan, Nevada, and Ohio. Talmer Bank is the 11th largest insured depository institution in Michigan, controlling deposits of approximately $3.5 billion, which represent 1.9 percent of the total deposits of insured depository institutions in that state.

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 12 U.S.C. § 1828(c).

4 12 U.S.C. § 321. These locations are listed in Appendix A.

5 12 CFR 262.3(b).

6 National asset data, market share, and ranking data are as of March 31, 2016, unless otherwise noted. State asset data, market share, and ranking data are as of June 30, 2015, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

On consummation of this proposal, Chemical would become the 87th largest depository organization in the United States, with consolidated assets of approximately $16.0 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Chemical would control consolidated deposits of approximately $12.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In Michigan, Chemical Bank would become the sixth largest depository organization, controlling deposits of approximately $10.9 billion, which represent 5.7 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 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.[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 application if the bank holding company controls or would upon consummation of the proposed transaction control more than 10 percent of the total deposits of insured depository institutions in the United States[9] or, in certain circumstances, the bank holding company would upon consummation control 30 percent or more of the total deposits of insured depository institutions in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.[10]

For purposes of the BHC Act, the home state of both Chemical and Talmer is Michigan. Talmer also is located in Illinois, Indiana, Nevada, and Ohio.[11] Chemical is well capitalized and well managed, and Chemical Bank has an outstanding Community Reinvestment Act of 1977 ("CRA")[12] rating. There are no minimum age requirements under the laws of Illinois, Indiana, Nevada, or Ohio that would apply to Chemical's acquisition of Talmer.[13]

On consummation of the proposed transaction, Chemical would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, Chemical would control approximately 5.7 percent of the total amount of deposits of insured depository institutions in Michigan, the only state in which

7 12 U.S.C. § 1842(d)(1)(A).

8 12 U.S.C. § 1842(d)(1)(B).

9 Similarly, the Bank Merger Act provides that, in general, the Board may not approve a bank merger if the transaction involves insured depository institutions with different home states and the resulting bank would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. 12 U.S.C. § 1828(c)(13). For purposes of the Bank Merger Act, the home state of both Chemical Bank and Talmer Bank is Michigan. 12 U.S.C. § 1828(c)(13)(C)(ii)(II). Accordingly, the deposit cap requirement of the Bank Merger Act does not apply to the proposed bank merger.

10 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).

11 *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.

12 12 U.S.C. § 2901 *et seq*.

13 *See* 205 Ill. Comp. Stat. 5/21.2(a); Ind. Code § 28-2-17; Nev. Rev. Stat. § 666.405; Ohio Rev. Code Ann. § 1115.05.

Chemical and Talmer have overlapping banking operations. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.[14]

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[15] Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[16]

Chemical and Talmer have subsidiary depository institutions that compete directly in six banking markets: Bad Axe, Bay City-Saginaw, Detroit, Grand Rapids, and Kalamazoo-Battle Creek, all located in Michigan; and Elkhart-Niles-South Bend, located in Michigan and Indiana.

The Board has considered the competitive effects of the proposal in each of the relevant markets. In particular, the Board has considered the number of competitors that would remain in the markets; the relative shares of total deposits in insured depository institutions in the markets ("market deposits") that would be controlled by Chemical;[17] 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");[18] and other characteristics of the markets.

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 Bay City-Saginaw, Detroit, Grand Rapids, Elkhart-Niles-South Bend, and Kalamazoo-Battle Creek banking markets. On consummation of the proposal, the Grand Rapids banking market would remain unconcentrated, and the Bay City-Saginaw, Detroit, Elkhart-Niles-South Bend, and

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14 Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("Riegle-Neal Act") permits the Board, in certain circumstances, to approve interstate merger transactions that would otherwise be prohibited under state law. 12 U.S.C. § 1831u(a)(1). For purposes of the Riegle-Neal Act, an "interstate merger transaction" is one in which the insured banks proposing to merge have different home states. *See* 12 U.S.C. § 1831u(g)(4) and (6). The home state of both Chemical Bank and Talmer Bank is Michigan: therefore section 102 of the Riegle-Neal Act does not apply to the proposed bank merger. *Id.*

15 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

16 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

17 Local deposit and market share data are as of June 30, 2015, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See*, *e.g.*, *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. *See*, *e.g.*, *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

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

Kalamazoo-Battle Creek banking markets would remain moderately concentrated, as measured by the HHI. The change in the HHI in these markets would be small, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in each of these banking markets.[19]

Banking Market Warranting Special Scrutiny

The structural effects that consummation of the proposal would have on the Bad Axe banking market[20] warrant a detailed review because the concentration level on consummation would exceed the threshold levels in the DOJ Bank Merger Guidelines when using initial competitive screening data. Using the initial screening data, Chemical is the fifth largest depository organization in the Bad Axe banking market, controlling approximately $99.4 million in deposits, which represent 10.5 percent of market deposits. Talmer is the second largest depository organization in the market, controlling approximately $170.1 million in deposits, which represent 18.0 percent of market deposits. On consummation, the combined entity would be the largest depository institution in the Bad Axe banking market, controlling approximately $269.5 million in deposits, which would represent approximately 28.5 percent of market deposits. The HHI in this market would increase by 378 points, from 1545 to 1923.

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 Bad Axe banking market.[21] In particular, three credit unions exert a competitive influence in the Bad Axe 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 credit unions to small businesses relative to commercial banks' lending levels.

This adjustment suggests that the resulting market concentration of the proposed transaction in the Bad Axe banking market is less significant than would appear from the initial competitive screening data, which focused on commercial bank competitors. After consummation, adjusting to reflect competition from credit unions in the market, the market concentration level in the Bad Axe banking market as measured by the HHI would increase by 364, from a level of 1494 to 1858, and the market share of Chemical resulting from the transaction would increase in the market from 10.3 percent to 28.0 percent. In addition to the three credit unions, six commercial bank competitors would remain in the market, three of which would have market shares of 20 percent, 17.1 percent, and 16.5 percent, respec-

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19 These five banking markets and the structural effects of the proposal in these markets are described in Appendix B.

20 The Bad Axe banking market is defined as Huron County; Argyle, Austin, Delaware, Forester, Greenleaf, Minden, Moore and Wheatland townships in Sanilac County; and Elkland and Elmwood townships in Tuscola County, all in Michigan.

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

22 The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See, e.g., BB&T Corporation*, FRB Order No. 2015-18 (July 7, 2015); *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc*. (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

tively. The presence of these viable competitors suggests that Chemical would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on Chemical in the Bad Axe market.

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market, including the Bad Axe 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 Bad Axe 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 and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[23] In its evaluation of the financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Chemical and Talmer are both well capitalized and the combined entity would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger that is structured as a cash and stock purchase, with a subsequent merger of the subsidiary depository institutions.[24] The asset quality, earnings, and liquidity of Chemical Bank and Talmer Bank are consistent with approval, and Chemical 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.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Chemical, Talmer, and their subsidiary depository institutions, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has

[23] 12 U.S.C. §§ 1842(c)(2), (5), and (6), and 1828(c)(5) and (11).

[24] To effect the holding company merger, each share of Talmer common stock would be converted into a right to receive Chemical common stock and cash, based on an exchange ratio. Chemical expects to fund some of the cash portion of the exchange with financing from a third-party lender. Chemical has the financial resources to support the obligation.

considered information provided by Chemical; the Board's supervisory experiences with Chemical and Talmer 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; as well as information provided by the commenter.

Chemical and its subsidiary depository institution are both considered to be well managed. Chemical has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. Chemical's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and its risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Chemical's plans for implementing the proposal. Chemical has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. Chemical would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Chemical's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner,[25] and Chemical plans to integrate Talmer's existing management and personnel in a manner that augments Chemical's management.[26]

Based on all the facts of record, including Chemical's supervisory record, managerial and operational resources, plans for operating the combined institution after consummation, and the comment received on the proposal, 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 Chemical and Talmer in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[27] 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, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[28] and requires the appropriate federal financial supervisory agency to assess a depository institution's

[25] Chemical 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 Chemical's compliance with these regulations through the supervisory process.

[26] On consummation, five of Talmer's directors will be added to Chemical's board, which will expand from seven to twelve members, and two of Talmer's directors will be added to Chemical Bank's board, which will expand from twelve to fourteen members. In addition, the chairman of Talmer will serve as the chairman of Chemical, the chief executive officer of Talmer will serve as the vice chairman of Chemical, and certain key executives of Talmer and Talmer Bank will be employed by Chemical and Chemical Bank following consummation of the proposal.

[27] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

[28] 12 U.S.C. § 2901(b).

record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[29]

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

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

Public Comment Regarding the Proposal

In this case, the Board received a comment from a commenter who objected to the proposal on the basis of alleged disparities in the number of residential real estate loans made to minorities, as compared to whites, by Chemical Bank in the Flint, Michigan Metropolitan Statistical Area ("Flint MSA") and the Battle Creek, Michigan MSA ("Battle Creek MSA"), as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA") for 2014.[30] The commenter also criticized the rate at which Chemical Bank denied applications by Hispanics, compared to that for whites, for home purchase loans in the Flint MSA, as reported under HMDA for 2014. In addition, the commenter cited a complaint about an overdraft fee charged by Chemical Bank.

Businesses of the Involved Institutions and Response to the Comment

Chemical Bank is a full-service bank, offering a broad range of financial products and services to individual consumers and businesses. Through its branch network in Michigan, it offers a variety of traditional banking products to consumers, including mortgage loan products, consumer loans, credit cards, and checking and savings products. Chemical Bank's business-focused products and services include business checking accounts, commercial loans, and commercial real estate loans. Between 2013 and 2015, Chemical acquired several depository institutions that were consolidated into Chemical Bank.[31]

Talmer Bank is a full-service bank that offers a broad range of retail and commercial banking products and services through its branch network in Michigan, Ohio, Illinois, Indiana, and Nevada. Its products and services include working capital lines of credit, business term loans, inventory and accounts receivable loans, construction loans, equipment finance and leasing, asset based loans, commercial real estate loans, home mortgage loans

[29] 12 U.S.C. § 2903.

[30] The commenter's concerns focused on the number of home purchase loans, home refinance loans, and home improvement loans that Chemical Bank offered to African Americans and Hispanics compared to whites in the Flint MSA, as well as the number of loans that Chemical Bank offered to African Americans compared to whites in the Battle Creek MSA.

[31] *See Chemical Financial Corporation*, FRB Order No. 2015-13 (April 20, 2015); *Chemical Financial Corporation*, Federal Reserve Release, H.2. No. 1, p. 2 (December 30, 2014), available at www.federalreserve.gov/releases/h2/20150103/h2.pdf; *Chemical Financial Corporation*, FRB Order No. 2014-16 (September 30, 2014).

for 1-4 family owner-occupied homes, home improvement loans, and commercial and residential real estate development loans.

Chemical denies that the HMDA data presented by the commenter reflect discriminatory or unfair lending practices by Chemical Bank in the Flint or Battle Creek MSAs. In response to allegations about low rates of lending to minorities in the Flint MSA, Chemical explains that Chemical Bank, with only two branches, has a small presence in a competitive market. Chemical notes that loan applications from African Americans and Hispanics in the Flint MSA represented a small percentage of total applications received by all lenders in the Flint MSA in 2014, and that Chemical's loan decisions with respect to applications it received reflected judgments based on credit history, debt-to-income ratios, and other nondiscriminatory factors. With respect to home purchase loans to African Americans, one of the products of concern for the commenter, Chemical represents that its originations to African Americans represented a higher percentage of Chemical Bank's total home purchase loans than the percentage of aggregate originations by all lenders in the Flint MSA in 2014.

Chemical also represents that Chemical Bank participates in a number of loan programs designed to meet the credit needs of LMI borrowers in the Flint MSA. Chemical Bank also has a program designed to help borrowers qualify for home mortgage loans, which includes financial literacy workshops, educational resources relating to the home ownership process, and providing funds for closing costs in exchange for borrowers completing the program. In addition to these home mortgage programs, Chemical also notes that it has products designed to meet the needs of LMI customers, such as products for borrowers with little or no credit history and checking accounts with no minimum opening deposit, minimum account balance requirements, or monthly maintenance fee. Chemical also represents that it engages in marketing efforts targeted toward minorities in the Flint MSA.

Concerning its level of lending in the Battle Creek MSA, Chemical notes that in 2014, Chemical Bank originated approximately 8 percent of all home mortgage loans and approximately 15 percent of all home refinance and home improvement loans to African American borrowers made in the Battle Creek MSA. Chemical represents that the percentage of home refinance and home improvement loans that it originated to African Americans far exceeded that of all other lenders in the MSA. Chemical asserts that it works to promote its home lending products that meet the needs of LMI borrowers in the Battle Creek MSA and that Chemical Bank engages in various outreach efforts to LMI individuals in the Battle Creek MSA, including providing financial literacy training and educational resources relating to home ownership.

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 public 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.[32] In this case, the Board considered the supervisory views of its supervisory staff and of examiners from the Federal Reserve Bank of Chicago ("Reserve Bank").

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

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[33] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply 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 HMDA, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;[34] (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The 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.[35] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of Chemical Bank

Chemical Bank was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the Reserve Bank, as of October 26, 2015 ("Chemical Bank

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[33] 12 U.S.C. § 2906.

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

[35] 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.

Evaluation").[36] The bank received "Outstanding" ratings for each of the Lending Test, the Investment Test, and the Service Test.[37]

Examiners found that Chemical Bank's overall lending levels reflected excellent responsiveness to credit needs in its assessment areas.[38] According to examiners, the bank made extensive use of innovative and flexible lending practices in order to serve assessment area credit needs. Examiners found that a substantial majority of the bank's loans were made to borrowers within its assessment areas. Overall, the examiners also found that the geographic distribution of the bank's loans reflected excellent penetration throughout its assessment areas. Further, examiners found that, overall, the bank exhibited an excellent record of serving the credit needs of its assessment areas. Examiners noted that the dollar amount of Chemical Bank's lending in its assessment areas increased by approximately 9.3 percent from the prior evaluation.

Examiners found that the distribution of the bank's borrowers, given the product lines offered, reflected adequate penetration among customers of different income levels and excellent penetration among businesses of different sizes. Examiners also found that Chemical Bank was a leader in making community development loans, with an increase of 13.3 percent of community development lending from the prior evaluation. Chemical Bank's community development lending efforts primarily focused on lending to support affordable housing and community development organizations that provide essential services to LMI individuals, as well as on revitalizing and stabilizing economically distressed geographies within the bank's assessment areas.

In the Battle Creek MSA, an area of concern for the commenter, examiners found the bank's lending to reflect excellent responsiveness to the credit needs of the assessment area. Examiners also noted Chemical Bank's distribution of borrowers, given the product lines offered, was good among customers of different income levels and excellent among businesses of different sizes. Chemical Bank was found to have a good record of serving the credit needs of LMI individuals and geographies and of small businesses, and to have made an adequate level of community development loans within the Battle Creek MSA. Examiners also highlighted Chemical Bank's extensive use of innovative and flexible lending practices within this assessment area.

In the Flint MSA, another area of concern for the commenter, examiners found the bank's lending to reflect adequate responsiveness to the credit needs of the assessment area. Examiners also found that the geographic distribution of the bank's loans reflected

[36] The Chemical Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reported, pursuant to HMDA and CRA data collection requirements (geographic distribution and borrower distribution) in 2013 and 2014. The evaluation period for community development lending, investments, and services was August 27, 2013, through October 26, 2015.

[37] The Chemical Bank Evaluation included full-scope evaluations of the Battle Creek, Michigan MSA; the Flint, Michigan MSA; the Grand Rapids-Wyoming, Michigan MSA; the Midland, Michigan MSA; the Niles-Benton Harbor, Michigan MSA; the Saginaw-Saginaw Township North, Michigan MSA; and the Northern Non-MSA (comprised of Alcona, Alpena, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Traverse, Iosco, Isabella, Kalkaska, Lake, Leelanau, Manistee, Mason, Mecosta, Missaukee, Montmorency, Newaygo, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, and Wexford counties). Limited scope evaluations were performed in the Bay City, Michigan MSA; the Kalamazoo-Portage, Michigan MSA; the South Bend-Mishawaka, Indiana-Michigan MSA (consisting of Cass County, Michigan); the Central Non-MSA (comprised of Gratiot, Ionia, and Shiawassee counties); the Eastern Non-MSA (comprised of Huron, Sanilac, and Tuscola counties); the Southern Non-MSA (comprised of Branch and Hillsdale counties); and the Western Non-MSA (consisting of Allegan County).

[38] The commenter contended that, although Chemical previously asserted that its acquisition of Northwestern Bancorp, Inc. ("Northwestern"), in 2014 would result in increased lending, such increased lending did not occur. In the Chemical Bank Evaluation, examiners found that the bank exhibited an excellent record of serving the credit needs of its assessment areas, including in the areas of northern Michigan where it acquired branches of Northwestern's subsidiary depository institution.

adequate penetration throughout the assessment area, and that the distribution of borrowers, given the product lines offered, reflected adequate distribution among customers of different income levels and excellent penetration among businesses of different sizes. Chemical Bank was found to exhibit an adequate record of serving LMI individuals and areas, and an excellent record of lending to very small businesses. The bank was found to use innovative and flexible lending practices; however, the bank made a low level of community development loans in the assessment area.

Examiners found that Chemical Bank made an excellent level of qualified community development investments and grants within its assessment areas. The bank was found to be a leader in providing investments not routinely provided by private investors. Examiners found that Chemical Bank made significant use of innovative and complex investments to support development initiatives. Examiners also found that Chemical Bank exhibited excellent responsiveness to credit and community development needs. Examiners noted that Chemical Bank's CRA-qualified investments and qualified community development donations increased by approximately 49.3 percent and 19.0 percent, respectively, in dollar amounts from the prior evaluation.

In the Battle Creek MSA, examiners found that Chemical Bank had made an excellent level of CRA-qualified community development investments and grants, and in the Flint MSA, Chemical Bank made a significant level of CRA-qualified community development investments and grants. These investments and grants included those not routinely provided by private investors, and Chemical Bank was found to occasionally be in a leadership position. In each of these MSAs, Chemical Bank was also found to make extensive use of innovative and complex investments to support community development initiatives, as well as to exhibit excellent responsiveness to the credit and community development needs of the assessment areas.

Examiners found Chemical Bank's delivery systems to be readily accessible to the bank's geographies and individuals of different income levels in the bank's assessment areas. Examiners also found that the bank's record of opening and closing branches did not adversely affect the accessibility of its delivery systems, particularly in LMI geographies or with LMI individuals.[39] Further, examiners highlighted that Chemical Bank was a leader in providing community development services throughout its assessment areas.

In the Battle Creek MSA and the Flint MSA, examiners found Chemical Bank's delivery systems to be accessible to the bank's geographies and individuals of different income levels. Examiners also found that the bank was a leader in providing community development services in both of these MSAs, and that the bank's services did not vary in a way that inconvenienced these assessment areas.

CRA Performance of Talmer Bank

Talmer Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of September 21, 2015 ("Talmer Bank Evaluation"),[40]

[39] Examiners reviewed all complaints received by Chemical Bank between January 2014 and June 2016 related to overdraft fees charged by Chemical Bank and found that the bank consistently charged overdraft fees in accordance with its policies, procedures, and customer disclosures. During this review, examiners did not identify any unfair or deceptive acts or practices or any other violations of applicable law.

[40] The Talmer Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed the bank's lending activity from January 1, 2013, through June 30, 2015. The evaluation period for community development loans, investments, and services was from July 11, 2012, through September 21, 2015.

with ratings of "High Satisfactory" for the Lending Test, Investment Test, and Service Test.[41]

Examiners found that Talmer Bank's lending levels reflected adequate responsiveness to the credit needs within its assessment areas, and that the bank exhibited a good record of serving the credit needs of LMI geographies and individuals within its assessment areas. Examiners also found the bank's geographic distribution of loans reflected good penetration throughout its assessment area, and the bank's distribution of loans to borrowers reflected adequate penetration among customers of different income levels and businesses of different sizes. Further, examiners found the bank made extensive use of innovative and flexible lending practices in order to serve the credit needs of the assessment areas, and made a relatively high level of community development loans.

Examiners found that Talmer Bank exhibited good responsiveness to the credit and community economic development needs of its assessment areas. Examiners noted that Talmer Bank made a significant level of community development investments and grants and occasionally was in a leadership position, particularly for investments that were not routinely provided by private investors. Talmer Bank was also found to make significant use of innovative and complex investments to support community development initiatives.

Examiners noted that Talmer Bank's delivery systems were accessible throughout the bank's assessment areas. Examiners also found that services and business hours did not vary in a way that inconvenienced LMI geographies or individuals in the bank's assessment areas. Further, examiners found that Talmer Bank provided a relatively high level of community development services.

Additional Supervisory Views

The Board has considered the results of a recent consumer compliance examination and fair lending review of Chemical Bank conducted by Reserve Bank examiners. The Board reviewed the examination report regarding Chemical Bank's record of compliance with fair lending and other consumer protection laws and regulations; the bank's policies and procedures to help ensure compliance with fair lending and other consumer protection laws and regulations; and as the bank's lending record. Chemical Bank intends to implement its policies and procedures at the combined organization following consummation of the transaction. Moreover, Chemical plans to expand its compliance program; create a comprehensive fair banking policy and program; and significantly increase the number of dedicated compliance, fair lending, and CRA staff for the combined organization on consummation of the transaction.

The Board has taken the information discussed above into account in evaluating whether Chemical has the experience and resources to ensure that the combined organization effectively implements policies and programs that allow the combined organization to effectively serve the credit needs of all the communities within the firm's assessment areas.

[41] The Talmer Bank Evaluation included full-scope evaluations of the Warren-Troy-Farmington Hills, Michigan Metropolitan Division ("MD"); the Detroit-Livonia-Dearborn, Michigan MD; the Non-MSA, Michigan (consisting of the Huron, Sanilac, and Tuscola counties); the Youngstown-Warren-Boardman, Ohio, MSA; the Chicago-Naperville-Arlington Heights, Illinois MD; the Elkhart-Goshen, Indiana MSA; and the Las Vegas-Henderson-Paradise, Nevada MSA. Limited scope evaluations were performed in the Ann Arbor, Michigan MSA; the Flint, Michigan MSA; the Grand Rapids-Wyoming, Michigan, MSA; the Kalamazoo-Portage, Michigan MSA; the Muskegon, Michigan MSA; the Saginaw, Michigan MSA; the Akron, Ohio MSA; the Cleveland-Elyria, Ohio MSA, and the Columbus, Ohio MSA.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Chemical represents that upon consummation of the proposal, existing customers of Talmer would have access to a complement of products and services that are more expansive than those currently available to Talmer customers, including expanded automobile, boat, and recreational vehicle lending; courier services for commercial customers; and certain consumer lending products not currently offered by Talmer. Chemical also intends to expand its municipal lending program to markets served by Talmer. Chemical also represents that no products would be discontinued as a result of the proposal. Moreover, Chemical asserts that customers of both institutions would benefit from a more expansive branch network.

Branch Closures

The commenter expressed concerns about Chemical's record of opening branches in connection with prior acquisitions. 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.[42] Specifically, examiners noted in the Chemical Bank Evaluation that Chemical Bank's branch openings and closures did not adversely affect the accessibility of products and services to LMI individuals or in LMI geographies, and that its branch closures were the result of reductions in branch activity. The Board also 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.[43] Chemical plans to close a Talmer Bank branch located in Holland, a moderate-income tract, and a branch in each of Flint and Port Hope, which are both middle-income tracts, all in Michigan.[44] For the branches in Holland and Flint, the receiving branches to which customers' accounts would be transferred are both within 0.6 miles from the proposed closing branch. Following the proposed closures, Chemical would continue to operate four branches in each of Holland and Flint. For the Port Hope branch, the receiving branch to which customers' accounts would be transferred is centrally located in Port Hope and would have longer business hours than the branch that is proposed to be closed.[45] Each of the receiving branches would be in the same income level tract as that of the proposed closing branches from which it would receive customers' accounts.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information

[42] *See,e.g.*, 12 CFR 228.24(d)(2). In addition, the Board, 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.

[43] *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.

[44] Chemical proposes to close Talmer Bank's branch offices located at 240 E. 8th Street, Holland; 4409 Miller Road, Flint; and 4474 Main Street, Port Hope, all of Michigan.

[45] Chemical also plans to sell two of Talmer Bank's branches, one located in Las Vegas, Nevada, and another in Chicago, Illinois, and to consolidate four Talmer Bank branches located in Michigan with Chemical Bank branches that are located within 1,000 feet of each branch.

provided by Chemical, the public comment on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval. The Board expects Chemical to implement policies, programs, and activities that are commensurate with the increased size and complexity of the institution.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act and the Bank Merger Act to require the Board to consider a proposal's "risk to the stability of the United States banking or financial system."[46]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or 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.[47] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[48]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Chemical would have approximately $16.0 billion in consolidated assets and, by any of a number of alternative measures of firm size, Chemical would not be likely to pose systemic risks. The Board generally presumes that a proposal that results in a firm with less than $25 billion in consolidated assets will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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

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[46] Sections 604(d) and (f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602, codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

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

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

Establishment of Branches

Chemical Bank has applied under section 9 of the FRA to establish branches at the current locations of Talmer Bank.[49] The Board has assessed the factors it is required to consider when reviewing an application under that section.[50] Specifically, the Board has considered Chemical Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises.[51] 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 proposal should be, and hereby is, approved.[52] 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 this proposal is specifically conditioned on compliance by Chemical with all the conditions set forth in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the proposal. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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[49] 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. Thus, state member banks may retain any branch following a merger that was a branch of any bank participating in the merger prior to February 25, 1927, or under state law, may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. *See* 12 U.S.C. §§ 36(b)(2) and (c). Upon consummation, all of Chemical Bank's branches would be permissible under applicable state law. *See* 205 Ill. Comp. Stat. 5/5(15)(a); Mich. Comp. Laws § 487.13705; Nev. Rev. Stat. § 660.015; Ohio Rev. Code Ann. § 1117.01; Ind. Code § 28-2-13-19.

[50] 12 U.S.C. § 322; 12 CFR 208.6.

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

[52] The commenter requested that the Board hold public hearings or meetings on the proposal. The Bank Merger Act and section 9 of the FRA do not require a public meeting or a formal public hearing on an application. Section 3 of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 U.S.C. § 1842(b); 12 CFR225.16(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 written comments that the Board has considered in acting on the proposal. The commenter's request did not identify disputed issues of fact material to the Board's decision that would be clarified by a public meeting. In addition, the request did not demonstrate why written comments do not present the commenter's views adequately or why a hearing or 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 or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

The commenter also requested an extension of the comment period. The Board provides a public comment period for an application to provide interested persons the opportunity to submit information and views related to the statutory factors it must consider under the BHC Act. The Board's rules contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. The commenter's request for additional time to comment does not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the Board has determined not to extend the comment period.

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 by the Reserve Bank acting under delegated authority.

By order of the Board of Governors, effective August 8, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix A

Illinois Branch to Be Established
1. 333 West Wacker Drive, Suite 710, Chicago, Illinois

Indiana Branches to Be Established
1. 303 South Third Street, Elkhart, Indiana
2. 511 West Lincoln Avenue, Goshen, Indiana

Michigan Branches to Be Established
1. 301 Summer Street, Algonac, Michigan
2. 2950 State Street South, Ann Arbor, Michigan
3. 1988 North Opdyke Road, Auburn Hills, Michigan
4. One East Huron Avenue, Bad Axe, Michigan
5. 833 North Van Dyke, Bad Axe, Michigan
6. 980 South Woodward, Birmingham, Michigan
7. 8700 North Second Street, Brighton, Michigan
8. 345 North State Street, Caro, Michigan
9. 727 South State Road, Davison, Michigan
10. 645 Griswold Street, Suite 70, Detroit, Michigan
11. 333 West Fort Street, Detroit, Michigan[53]
12. 31731 Northwestern Highway #105, Farmington Hills, Michigan
13. 33205 Grand River Avenue, Farmington, Michigan
14. 37386 Twelve Mile Road, Farmington Hills, Michigan
15. 3213 Genesee Road, Flint, Michigan
16. 4409 Miller Road, Flint, Michigan
17. 6120 Fenton Road, Flint, Michigan
18. 4778 24th Avenue, Fort Gratiot, Michigan
19. 220 East Main Street, Flushing, Michigan
20. 170 West Genesee Street, Frankenmuth, Michigan
21. 333 Washington Avenue, Grand Haven, Michigan
22. 4505 Cascade Road Southeast, Grand Rapids, Michigan
23. 20276 Mack Avenue, Grosse Pointe Woods, Michigan
24. 99 Kercheval Avenue, Grosse Pointe Farms, Michigan
25. 9252 Joseph Campau Avenue, Hamtramck, Michigan
26. 106 South Huron, Harbor Beach, Michigan
27. 240 East 8th Street, Holland, Michigan
28. 715 South Cedar Street, Imlay City, Michigan

[53] Chemical has represented that Talmer has applied to the FDIC to relocate its branch located at 645 Griswold Street, Suite 70, Detroit, Michigan, to 333 West Fort Street, Detroit.

29. 2855 Wadhams Road, Kimball, Michigan
30. 567 East Genesee Street, Lapeer, Michigan
31. 17900 Haggerty Road, Livonia, Michigan
32. 624 West Nepessing Street, Suite 105, Lapeer, Michigan
33. 5536 Main Street, Lexington, Michigan
34. 1800 East Twelve Mile Road, Madison Heights, Michigan
35. 210 South Parker Street, Marine City, Michigan
36. 2015 Gratiot Avenue, Marysville, Michigan
37. 100 North Main Street, Mount Clemens, Michigan
38. 281 Seminole Road, Muskegon, Michigan
39. 800 East Milham, Portage, Michigan
40. 1527 Hancock Street, Port Huron, Michigan
41. 201 Huron Avenue, Port Huron, Michigan
42. 3136 Lapeer Road, Port Huron, Michigan
43. 4474 Main Street, Port Hope, Michigan
44. 525 Water Street, Port Huron, Michigan
45. 440 Main Street, Rochester, Michigan
46. 629 West Sanilac Road, Sandusky, Michigan
47. 668 Unionville Road, Sebewaing, Michigan
48. 50787 Corporate Drive, Shelby Township, Michigan
49. 270 Clinton Avenue, St. Clair, Michigan
50. 24805 West Twelve Mile Road, Southfield, Michigan
51. 3801 Metropolitan Parkway, Sterling Heights, Michigan
52. 2301 West Big Beaver Road, Troy, Michigan
53. 14801 East Twelve Mile Road, Warren, Michigan
54. 7950 West Maple Road, West Bloomfield, Michigan

Nevada Branch to Be Established

1. 1700 West Horizon Ridge Parkway, Suite 101, Henderson, Nevada

Ohio Branches to Be Established

1. 1977 Cooper Foster Park Road, Amherst, Ohio
2. 724 Boardman-Poland Road, Boardman, Ohio
3. 7290 Warren Sharon Road, Brookfield, Ohio
4. 3801 Boardman Canfield Road, Canfield, Ohio
5. 325 South High Street, Cortland, Ohio
6. 6033 Perimeter Drive, Dublin, Ohio
7. 111 Antioch Drive, Elyria, Ohio
8. 200 Middle Avenue, Elyria, Ohio
9. 361 Midway Mall Boulevard, Elyria, Ohio
10. 351 North Main Street, Grafton, Ohio
11. 35423 Center Ridge Road, North Ridgeville, Ohio
12. 10416 Main Street, New Middletown, Ohio
13. 2 South Main Street, Poland, Ohio
14. 999 East Main Street, Ravenna, Ohio
15. 4183 Tallmadge Road, Rootstown, Ohio
16. 6150 Enterprise Parkway, Solon, Ohio
17. 185 East Market Street, Warren, Ohio
18. 2001 Elm Road Northeast, Warren, Ohio
19. 4460 Mahoning Avenue Northwest, Warren, Ohio
20. 8226 East Market Street, Warren, Ohio
21. 6002 Youngstown Warren Road, Niles, Ohio
22. 4682 Belmont Avenue, Youngstown, Ohio

23. 25 Market Street, Youngstown, Ohio
24. 3900 Market Street, Youngstown, Ohio
25. 101 South Canfield-Niles Road, Youngstown, Ohio
26. 3516 South Meridian Road, Youngstown, Ohio

Appendix B

Chemical Bank/Talmer Bank Banking Markets in Michigan Consistent with Board Precedent and DOJ Bank Merger Guidelines

Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Bay City-Saginaw, Michigan – Bay County; Saginaw County; Tuscola County (excluding Elmwood and Elkland townships); Arenac County (excluding Mason, Turner, and Whitney townships), all of Michigan.						
Chemical Bank Pre-Consummation	2	$590.0M	16.7			
Talmer (Talmer Bank)	15	$36.5M	1.0			
Chemical Bank Post-Consummation	2	$626.5M	17.7	1278	34	17
Detroit, Michigan – Oakland County; Macomb County; Wayne County; Lapeer County; Genesee County; Washtenaw County; St. Clair County; Livingston County; Lenawee County; Shiawassee County; Monroe County (excluding Whiteford, Bedford, and Erie townships); Sanilac County (excluding Greenleaf, Austin, Argyle, Moore, Minden, Wheatland, Delaware, and Forester townships), all of Michigan.						
Chemical Bank Pre-Consummation	24	$278.5M	0.2			
Talmer (Talmer Bank)	9	$3,148.3M	2.5			
Chemical Bank Post-Consummation	8	$3,426.8M	2.7	1451	1	51
Grand Rapids, Michigan – Allegan County; Barry County; Ionia County; Kent County; Mecosta County; Montcalm County; Muskegon County; Newaygo County; Oceana County; Ottawa County; Newkirk, Dover, Ellsworth, Cherry Valley, Pinona, Yates, and Chase townships of Lake County; and Richmond, Evart, Hersey, and Orient townships of Osceola County, all of Michigan.						
Chemical Bank Pre-Consummation	3	$2,201.6M	9.5			
Talmer (Talmer Bank)	22	$131.8M	0.5			
Chemical Bank Post-Consummation	3	$2,333.4M	10.0	941	10	32
Elkhart-Niles-South Bend, Indiana – Elkhart, St. Joseph, Kosciusko, LaGrange, and Marshall counties, of Indiana; Davis, Oregon, Washington, and North Bend (including the entire city of Bass Lake) townships in Starke County, Indiana; Cass County; Buchanan, Niles and Bertrand townships in Berrien County; the Southern half of St. Joseph County (Constantine, Florence, Sherman, Burr Oak, Mottville, White Pigeon, Sturgis, and Fawn River Townships), of Michigan.						
Chemical Bank Pre-Consummation	14	$107.4M	1.1			
Talmer (Talmer Bank)	19	$54.6M	0.5			
Chemical Bank Post-Consummation	13	$162.0M	1.6	1291	2	30
Kalamazoo-Battle Creek, Michigan – Kalamazoo and Van Buren counties; Flowerfield, Park, Mendon, Leonidas, Fabius, Lockport, Nottawa, and Colon townships of St. Joseph County, all of Michigan.						
Chemical Bank Pre-Consummation	3	$346.7M	9.1			
Talmer (Talmer Bank)	15	$59.7M	1.6			
Chemical Bank Post-Consummation	3	$406.4M	10.6	1334	28	17

Deposit data are as of June 30, 2015. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.