FRB Order No. 2013-12
December 6, 2013

FEDERAL RESERVE SYSTEM

Ameris Bancorp
Moultrie, Georgia

Order Approving the Acquisition of a Bank Holding Company

Ameris Bancorp ("Ameris"), Moultrie, Georgia, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to acquire The Prosperity Banking Company ("Prosperity") and thereby indirectly acquire its subsidiary bank, Prosperity Bank ("Prosperity Bank"), both of St. Augustine, Florida. Immediately following the proposed acquisition, Prosperity Bank would be merged into Ameris's subsidiary bank, Ameris Bank, Moultrie, a state nonmember bank.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the Federal Register (78 Federal Register 35033 (2013)).[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.

Ameris, with consolidated assets of approximately $2.8 billion, is the 261st largest insured depository organization in the United States, controlling approximately $2.4 billion in consolidated deposits.[4] Ameris Bank operates in Alabama, Florida, Georgia, and South Carolina. Ameris Bank is the 14th largest depository institution in Georgia, controlling deposits of approximately $1.6 billion, and is the 88th largest

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[1] 12 U.S.C. § 1842.

[2] The merger of Prosperity Bank into Ameris Bank is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC") under the Bank Merger Act. 12 U.S.C. § 1828(c). The FDIC approved the bank merger on November 6, 2013 (Letter from Jeffrey L. Povlak, Assistant Regional Director of FDIC Atlanta Regional Office, to Jody L. Spencer, Rogers & Hardin LLP (Nov. 6, 2013)).

[3] 12 CFR 262.3(b).

[4] Asset and nationwide deposit-ranking data are as of June 30, 2013, unless otherwise noted.

depository institution in Florida with approximately $373.3 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in each of these states.[5] In addition, Ameris Bank is the 36th largest depository institution in South Carolina with approximately $304.8 million in deposits, and the 60th largest in Alabama with approximately $186.4 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in each of those states.

Prosperity, with total consolidated assets of $753 million, controls Prosperity Bank, which operates in Florida. Prosperity Bank is the 72nd largest insured depository institution in Florida, controlling deposits of approximately $490 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Ameris would become the 215th largest depository organization in the United States, with total consolidated assets of approximately $3.6 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. Ameris would have total consolidated deposits of approximately $2.9 billion. In Florida, Ameris would become the 51st largest depository organization, controlling deposits of approximately $868.8 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act imposes certain requirements on interstate transactions. Section 3(d) generally provides that the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank in a state other than the home state of the bank holding company without regard

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[5] State deposit data are as of June 30, 2013. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

to whether the transaction is prohibited under state law.[6] However, this section further provides that 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 that has not been in existence for the lesser of the state statutory minimum period of time or five years.[7] In addition, the Board may not approve an application by a bank holding company to acquire an insured depository institution if the home state of such insured depository institution is a state other than the home state of the bank holding company and the bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States.[8]

For purposes of the BHC Act, the home state of Ameris is Georgia,[9] and Prosperity is located in Florida.[10] Ameris is well capitalized and well managed under applicable law. Georgia law has no minimum requirements for period of operation,[11] and Prosperity Bank has been in existence for more than five years.

Based on the latest available data reported by all insured depository institutions, the total amount of consolidated deposits of insured depository institutions in the United States is $10.4 trillion. On consummation of the proposed transaction, Ameris

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[6] The standard was changed from adequately capitalized and adequately managed to well capitalized and well managed by section 607(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(d)(1)(A).

[7] 12 U.S.C. § 1842(d)(1)(B).

[8] 12 U.S.C. § 1842(d)(2)(A).

[9] See 12 U.S.C. § 1842(d). 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.

[10] 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); 1842(d)(1)(A); and 1842(d)(2)(B).

[11] See GA. CODE § 7-1-530 (2013) (permits interstate acquisitions but does not impose a requirement for period of operation).

would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Accordingly, in light of all the facts of record, the Board is not required to deny the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[12]

Ameris and Prosperity compete directly in the Jacksonville Area, Florida banking market.[13] The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative shares of total deposits in insured depository institutions in the market ("market deposits") controlled by Ameris and Prosperity;[14] the concentration levels of market deposits and the increase in those levels, as measured by the Herfindahl-Hirschman Index

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[12] 12 U.S.C. § 1842(c)(1).

[13] The Jacksonville Area, Florida banking market is defined as Baker, Clay, Duval, and Nassau counties in Florida; the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, St. Johns, and Switzerland in St. Johns County, Florida; and the city of Folkston in Charlton County, Georgia.

[14] Deposit and market share data are as of June 30, 2013, 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 of commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[15] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for this market. On consummation of the proposal, the banking market would remain highly concentrated, as measured by the HHI, and numerous competitors would remain.[16]

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

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking market in which Ameris and Prosperity

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

[16] Ameris operates the 12th largest depository institution in the Jacksonville Area, Florida banking market with approximately $238 million in deposits, which represent less than 1 percent of market deposits. Prosperity operates the 25th largest depository institution in the same market, controlling deposits of approximately $42.5 million, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Ameris would operate the 12th largest depository institution in the market, controlling weighted deposits of approximately $280.5 million, which represent less than 1 percent of market deposits. The HHI would remain unchanged at 2937, and 39 competitors would remain in the market.

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

Other Section 3(c) Considerations

Section 3(c) of the BHC Act requires the Board to take into consideration a number of other factors in acting on bank acquisition applications. These factors include the financial and managerial resources (including the competence, experience, and integrity of the officers, directors, and principal shareholders) and future prospects of the company and banks concerned; the effectiveness of the company in combatting money laundering; the convenience and needs of the community to be served; and the extent to which the proposal would result in greater or more concentrated risks to the stability of the United States banking or financial system.

The Board has considered all of these factors and, as described below, has determined that they are all consistent with approval of the application. The review was conducted in light of all the facts of record, including supervisory and examination information from various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, information provided by Ameris, and public comments received on the proposal.

A. Financial, Managerial, and Other Supervisory Considerations

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

In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

The Board has considered the financial factors of the proposal. Ameris and Ameris Bank are well capitalized and would remain so on consummation of the proposed acquisition, which is a bank holding company merger, structured to give Prosperity shareholders the option of exchanging their shares for shares in Ameris or receiving cash consideration.[17] Ameris is in satisfactory financial condition, and the asset quality, earnings, and liquidity of Ameris Bank are consistent with approval. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

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

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

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[17] If a holder of Prosperity common stock elects to exchange shares, the Prosperity shares would be cancelled and converted into the right to receive Ameris's common stock based on a fixed exchange ratio. If a holder of Prosperity common stock elects to receive cash consideration for shares, the holder would receive a fixed cash amount in exchange for each share. The number of shares of Prosperity common stock for which cash consideration would be paid is limited to 50 percent of the total number of Prosperity shares converted in the transaction. Ameris has the resources to fund the cash consideration portion of the transaction.

The Board also has considered Ameris's plans for implementing the proposal. Ameris is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal.[18] Ameris would implement its risk management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Ameris's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Ameris plans to integrate Prosperity's existing management and personnel in a manner that augments Ameris's management.[19]

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

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal and Ameris's money-laundering policies are consistent with approval.

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[18] Ameris Bank has support divisions with experienced senior management with specific areas of expertise and responsibilities to ensure a smooth integration, including a dedicated systems conversion project team and a special assets team. In addition, Ameris Bank has reassigned its most experienced senior credit officer to manage the region that will include the legacy Prosperity Bank locations, and has hired compliance and audit staff experienced in bank integration.

[19] Certain senior executive officers of Prosperity Bank are expected to retain management positions within the merged bank. Following the merger, the current President and Chief Executive Officer of Prosperity Bank will serve as Regional President of Ameris Bank, the current Executive Vice President and Chief Lending Officer of Prosperity Bank will serve as Senior Vice President/Commercial Banking of Ameris Bank, the current Executive Vice President and Chief Banking Officer of Prosperity Bank will serve as Senior Vice President/Retail Banking of Ameris Bank, and the Executive Vice President and Chief Credit Officer of Prosperity Bank will serve as Senior Vice President/Credit Administration of Ameris Bank. The executive officers and directors of Ameris and Ameris Bank will continue to serve in their capacities following the merger.

B. Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[20] 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,[21] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[22]

The Board has considered all the facts of record, including reports of examination of the CRA performance of Ameris Bank and Prosperity Bank, data reported by Ameris Bank and Prosperity Bank under the Home Mortgage Disclosure Act ("HMDA"),[23] other information provided by Ameris, confidential supervisory information, and the public comments received on the proposal. The commenters objected to the proposal on the basis of Ameris Bank's fair lending record as reflected in 2011 HMDA data and the bank's CRA performance record.

1. Records of Performance Under the CRA

As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[24] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the

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[20] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 et seq.

[21] 12 U.S.C. § 2901(b).

[22] 12 U.S.C. § 2903.

[23] 12 U.S.C. § 2801 et seq.

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

institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[25] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of Ameris Bank.

Ameris Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of December 7, 2009 ("Ameris Bank Evaluation").[26] Examiners considered Ameris Bank to have an adequate record of lending inside of its assessment areas and an adequate record in community development lending.[27] Ameris Bank received a "low satisfactory" rating for the Lending, Service, and Investment Tests.[28]

As described in the Ameris Bank Evaluation, FDIC examiners found that the bank's overall volume of lending was good and that it had a good record of serving its

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[25] 12 U.S.C. § 2906.

[26] The 2009 examination was conducted using the Large Bank CRA Examination Procedures. Examiners focused on the bank's small business and residential lending record for 2008.

[27] The Ameris Bank Evaluation reviewed data available to the FDIC as of the date of the evaluation concerning all 2008 and 2009 loans originated or purchased within the relevant assessment areas. In addition, examiners reviewed all of the community development activities and the flexible and innovative lending practices and products from June 30, 2003, through September 30, 2009.

[28] The Ameris Bank Evaluation included a full-scope review of four assessment areas: Albany, Georgia MSA; Dothan, Alabama MSA; Jacksonville, Florida MSA; and Columbia, South Carolina MSA. A limited scope review was performed in the Tifton, Georgia Non-MSA. Examiners placed greater weight on the bank's performance in Georgia than in the other three states due to the bank's longevity in the state as well as the number of its offices and the volume of its lending operations in the state; 77 percent of the bank's loans were made in the Georgia market.

assessment areas' credit needs.[29] The bank had a good record of lending to businesses of different sizes, especially smaller-sized businesses, and an adequate record of residential lending to borrowers of different incomes. FDIC examiners noted, however, that isolated instances of unfair lending had been identified in the bank's Dothan, Alabama, assessment area.[30] Examiners noted that, considering the differences among the bank's markets and their respective demographics, Ameris Bank had adequately penetrated LMI geographies throughout its assessment areas. Examiners also noted that the bank had made good use of its flexible lending programs and had originated over $9.2 million in community development loans in its combined assessment areas during the evaluation period.

With respect to the Investment Test, FDIC examiners found that although Ameris Bank was passive to the investment needs of its communities, it did participate in various CRA-qualified investment vehicles. In particular, FDIC examiners noted that Ameris Bank's total outstanding qualified community development investments of $6.9 million represented 0.31 percent of average total assets since the previous examination and 2.75 percent of total equity capital for the same period. The dollar volume of investments, viewed in light of Ameris Bank's capacity and the opportunity for making qualified investments in its assessment areas, was a key driver in the rating assigned to Ameris Bank on the Investment Test.

With respect to the Service Test, FDIC examiners focused on the retail banking and community development services provided by Ameris Bank throughout its assessment areas and concluded that the bank provided a reasonable level of both services. Specifically, FDIC examiners concluded that the bank's delivery systems were

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[29] Small business and residential mortgage lending are the bank's primary lending focus.

[30] Specifically, FDIC examiners identified three instances of unfair pricing for African American borrowers compared to similarly-situated white borrowers in the Dothan, Alabama market. The FDIC determined that these were isolated instances, required the bank to take corrective actions to address deficiencies in its compliance management system highlighted by these instances, and concluded that the bank's overall compliance management system was adequate.

reasonably accessible overall[31] and that the bank provided a fairly reasonable number of community development services in its areas of operations.[32] However, examiners found that during the evaluation period Ameris Bank had only an adequate level of participation in community development activities and retail banking services dedicated to LMI areas or individuals in its assessment areas.

CRA Performance of Prosperity Bank.

Prosperity Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of April 18, 2011 ("Prosperity Bank Evaluation"), with ratings of "satisfactory" for the Lending and Community Development Tests.[33] Examiners concluded that Prosperity Bank's lending levels demonstrated excellent responsiveness to the credit needs, and a satisfactory responsiveness to the community development needs, of its assessment areas, and that the bank maintained a significant level of qualified community development investments. Examiners noted, however, that Prosperity Bank showed an inadequate responsiveness to the credit needs of small- and start-up businesses in several assessment areas.

Ameris Bank's Efforts Since the 2009 CRA Evaluation.

Ameris represents that since the Ameris Bank Evaluation, Ameris Bank has extended 43 community development loans totaling $52.2 million, which primarily

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[31] At the time of the Ameris Bank Evaluation, the bank operated 48 full-service offices, eight branches in moderate-income geographies, 25 in middle-income tracts, and 14 in upper-income tracts. Of the 25 branches located in middle-income tracts, 11 were located in close proximity to moderate-income tracts. Ameris Bank also had 47 ATM locations and provided customers with free internet and telephone access to their accounts.

[32] The Ameris Bank Evaluation found that the bank participated in a total of 252 service projects in 2008 and 2009, of which 113 counted as CRA community development services (e.g., providing a first-time homebuyer workshop).

[33] The Prosperity Bank Evaluation was conducted using the Small Bank CRA Examination Procedures, and examiners reviewed the bank's small business lending activity for the 2010 calendar year and loans reported on the bank's 2008 HMDA Loan Application Register. These products were selected for analysis because they represented 86.8 percent of the bank's loan portfolio.

funded affordable housing initiatives and the provision of community services in various locations, including distressed communities, throughout its assessment areas. In addition, Ameris stated that, from 2010 to 2013, Ameris Bank has made $33.8 million in qualified investments, including investments in Ginnie Mae Mortgage Backed Securities and the CRA Qualified Investment Fund, both of which benefitted all four states in the bank's assessment areas. The bank also invested in school district bonds in Georgia and South Carolina and bonds from the Atlanta Georgia Urban Residential Finance Authority. Ameris also noted that since the Ameris Bank Evaluation, the bank has made approximately $186,000 in donations, including matching dollars donated to the bank's "Fight Hunger Campaign" and other donations to organizations providing community services to LMI individuals, as well as economic development and affordable housing.[34]

2. Fair Lending Record and Public Comments on the Application

The Board has considered the records of Ameris Bank and Prosperity Bank in complying with fair lending and other consumer protection laws. In addition to reviewing the Ameris Bank and Prosperity Bank Evaluations and Ameris Bank's record of performance in providing community development lending and services since its evaluation, as discussed above, the Board's consideration includes an evaluation of Ameris Bank's fair lending policies and procedures. This also includes consideration of other agencies' views on Ameris Bank's record of performance under fair lending laws. The Board also has taken into account the comments on the application.

Ameris's Fair Lending Program.

Ameris has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. The company's legal and compliance risk management program includes a centralized marketing plan to ensure consistency of marketing and advertising both at the corporate and the local/regional levels, secondary review of proposed loan pricing to reduce

[34] These loans, investments, and donations have not yet been evaluated by the FDIC.

pricing exceptions, compliance training for applicable employees on a quarterly basis, and collection and tracking of customer complaints to ensure appropriate responses and reports to management or the board of directors concerning indications of possible fair lending implications. Ameris is developing a customer-based pricing model that would allow more consistent pricing at the customer level across the entirety of Ameris Bank. In addition, Ameris has begun to develop a centralized approval and review process to enable bank-wide secondary reviews, including denied, withdrawn, approved, or not-accepted loans, and has also created a "Chief Risk Officer" position to provide direct oversight and management of the company's compliance program. Ameris's risk-management systems and its policies and procedures for assuring compliance with fair lending laws would be implemented at the combined organization.

Public Comments on the Application.

Commenters raised concerns about the greater incidence of higher-cost mortgage loans to minority and LMI borrowers than to nonminority borrowers compared to the aggregate of all lenders in the bank's rural Georgia markets, as reflected by data reported under HMDA in 2011. Specifically, commenters alleged that 42.1 percent of the bank's higher-cost loans were issued to LMI borrowers compared to 33.8 percent for the aggregate. Similarly, commenters alleged that 21.4 percent of the bank's higher-cost loans were issued to African American borrowers compared to 15.7 percent for the aggregate. Commenters also noted pricing disparities between African American and white borrowers and between LMI and middle- and upper-income borrowers with respect to the bank's home-improvement and refinance loans. It was also alleged that Ameris Bank issued fewer prime loans to LMI and African American borrowers compared to the aggregate. The commenters contended that these disparities suggest that Ameris Bank may be steering LMI and African American borrowers into higher-cost loans and that the bank needed to improve its marketing, underwriting, and product development activities. In addition, the commenters questioned the public benefits of the proposal.

Analysis of HMDA Data and Pricing Disparities.

Although the commenters did not allege specific denial disparities, they generally contended that Ameris Bank had a poor record of meeting the credit needs of LMI and African American borrowers in the communities the bank served. In response to the comments, the Board analyzed Ameris Bank's HMDA data to develop a view of the bank's overall lending patterns. The Board's analysis included a review of the bank's 2010, 2011, and 2012 HMDA and small business lending data in its combined Statewide CRA assessment areas, for each statewide assessment area, including the rural Georgia Statewide areas, and in several individual markets where the bank received a significant volume of applications.

The Board's analysis revealed that generally Ameris Bank's volume of mortgage applications from and loans to African American and Hispanic individuals, as a percent of total applications and loans, exceeded those of the aggregate for all three years. Similarly, the bank's record of receiving applications from and making loans to majority-minority tracts, to LMI tracts, and to LMI individuals also consistently exceeded those of the aggregate. Within the combined Georgia market, where the bank derived 67 percent of its total loans for 2012, the bank's percentage of mortgage applications from and loans to Hispanic individuals exceeded that of the aggregate, although its percentages for African American individuals generally lagged the aggregate for the three years. However, the bank's percentages of applications from and loans to majority-minority tracts, LMI tracts, and LMI individuals in the combined Georgia market generally approximated or exceeded those of the aggregate. Moreover, in its rural Georgia markets, which were of particular interest to the commenters, Ameris Bank's percentage of applications from and loans to African Americans and Hispanic individuals exceeded those of the aggregate. The bank's percentage of applications from and loans to majority-minority tracts, LMI tracts and LMI individuals also consistently exceeded those of the aggregate in this market.

In addition, to address the pricing disparities noted by commenters, the Board reviewed Ameris Bank's 2011 mortgage pricing data for its rural Georgia markets as well as the bank's 2011 and 2012 HMDA data for relevant assessment areas. Although the Board was not able to duplicate the specific data disparities presented by the commenters, the Board's analysis more generally confirmed the commenters' allegations that the bank's volume of high-cost loans, as a percentage of total loans, exceeded those of the aggregate and that the bank made fewer prime loans to LMI and African American borrowers than the aggregate in the markets of concern to the commenters. The Board's analysis showed that Ameris had a higher percentage of higher-cost loans than the aggregate in 2011and 2012. Moreover, the bank's percentages of higher-cost loans to African American and Hispanic borrowers were significantly higher than those of the aggregate. Similarly, the bank's percentages of higher-cost loans for minority and LMI individuals and for minority and LMI census tracts exceeded those of the aggregate.

The Board is concerned by data indicating pricing disparities between minority and white borrowers and between LMI and middle- and upper-income borrowers. The Board believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. However, many elements factor into a lender's pricing decision, and HMDA data are not sufficient to evaluate a bank's compliance with fair lending laws and regulations because the data do not include the key lending factors which may explain the observed disparities.35 Fully evaluating Ameris Bank's compliance with fair lending laws and regulations overall and with respect to its loan pricing practices would require a thorough review of the bank's application and underwriting policies and procedures, as

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

well as access to information contained in the application files, to determine whether the observed pricing disparities persist after taking into account legitimate underwriting factors.

The Board has consulted with the bank's primary federal regulator, the FDIC, regarding its evaluation of Ameris Bank's compliance with fair lending laws and regulations overall and with respect to its loan pricing practices in particular. The FDIC reported that, based on a recent review, it did not find evidence that Ameris Bank engaged in discriminatory conduct in making its credit decisions.

In response to the commenters' concerns about racial and income disparities in the bank's loan pricing practices, the FDIC conducted an onsite review of Ameris Bank to determine whether the bank has been pricing mortgage loans fairly, based on the creditworthiness of the borrower.[36] Although the review confirmed the disparities noted by commenters, FDIC examiners did not find that the bank deviated from its established pricing matrix in the reviewed cases or that loan prices were based on discriminatory reasons.[37] FDIC examiners concluded that race was not a factor in the bank's pricing of loans. In addition, FDIC examiners conducted an underwriting analysis comparing minority and nonminority denied and approved applicants and did not find evidence that applicants were denied based on prohibited factors. Examiners also reviewed the bank's mortgage marketing practices and did not find evidence that the bank was steering or targeting minority individuals into higher-priced loans. Following its review of the issues raised by the public comments, the FDIC concluded that there was no basis for denying the merger of Prosperity Bank into Ameris Bank and has approved the merger under the Bank Merger Act.

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[36] The review began on September 16, 2013, and examiners reviewed the bank's loan data for 2011, 2012, and year-to-date 2013.

[37] The review also showed that pricing for the bank's secondary market loans is standardized through an automated underwriting system and that the bank uses a manual underwriting system and its pricing matrix to price its nonconforming portfolio loans.

3. Convenience and Needs of Communities to Be Served by the Combined Organization

The Board has considered the extent to which the proposal would benefit the customers of Ameris Bank, Prosperity Bank, or both.[38] Such benefits can include merger-related cost savings, improvements in the quality of existing product offerings, and the availability of products that were not previously available to customers of either bank.

Ameris represents that the proposal would result in cost savings for the combined organization by consolidating redundant functions, including back-office operations. Ameris notes that the combined organization would be able to provide customers with benefits through more efficient and cost-effective provision of banking services and would be able to dedicate additional resources to meet the banking needs of their customers. In addition, Ameris notes that Prosperity Bank's current operations would be evaluated under the more strenuous requirements of the large bank examination procedures, which may further improve lending performance among local constituents.

Ameris also states that it would provide substantially similar retail and commercial banking products and services as are currently provided by Prosperity Bank. Prosperity Bank's customers would benefit from Ameris Bank's stronger financial position as well as its banking expertise and resources, including marketing, advertising, product development, commercial and consumer credit, employee training and personnel, and automated banking.

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[38] Commenters alleged that the proposal would not provide a clear or significant public benefit. The commenters specifically asserted that to satisfactorily demonstrate the public benefits of the proposal, Ameris should, among other things, partner with local community organizations, including the commenters' partners, to offer housing counseling and financial education classes to help underserved borrowers qualify for affordable mortgages. In evaluating the public benefits of a proposal, the Board considers all benefits of the proposed transaction, not just those that benefit specific disadvantaged communities. See, e.g., FirstMerit Corporation, FRB Order No. 2013-3 (March 22, 2013).

The merger also would benefit current customers of Prosperity Bank through access to significantly larger branch and ATM networks. The branch network available to current Prosperity Bank customers would increase from 12 to 69 branch locations throughout Georgia, Florida, South Carolina and Alabama.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Ameris, confidential supervisory information, and the public comments on the proposal. Based on the Board's analysis of the HMDA data, evaluation of the mortgage lending operations and compliance programs of Ameris Bank and Prosperity Bank, and review of examination reports, the Board believes that the convenience and needs factor, including the CRA record of the insured depository institutions involved in this transaction, is consistent with approval of the application. The Board encourages Ameris to continue to seek opportunities to assist in meeting the credit needs of the communities it serves.

C. Financial Stability

The Dodd-Frank Act amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[39]

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

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

complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[40] 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.[41]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, Ameris would have approximately $3.6 billion in consolidated assets, and by any of a number of alternative measures of firm size, Ameris would be outside the 100 largest U.S. financial institutions. The Board generally presumes that a merger resulting in a firm with less than $25 billion in total consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. The companies engage and would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, Ameris's intrafinancial assets and liabilities would comprise a negligible share of the system-wide total, both before and after the transaction. The resulting organization would not engage in complex activities, nor would it provide critical services in such volume that disruption in those services would

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

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

have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

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

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[42] 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 Ameris 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

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

by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors,[43] effective December 6, 2013.

Margaret McCloskey Shanks (signed)

Margaret McCloskey Shanks
Deputy Secretary of the Board

[43] Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Tarullo, Raskin, Stein, and Powell.