FRB Order No. 2013-13
December 12, 2013

FEDERAL RESERVE SYSTEM

United Bankshares, Inc.
Charleston, West Virginia

Order Approving the Acquisition of a Bank Holding Company, Merger of Banks, and Establishment of Branches

United Bankshares, Inc. ("United"), Charleston, West Virginia, and its subsidiary, George Mason Bankshares, Inc. ("GMB"), Fairfax, Virginia (together with United, the "Applicants"), have requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to acquire Virginia Commerce Bancorp, Inc. ("VCB") and thereby indirectly acquire its subsidiary bank, Virginia Commerce Bank ("VC Bank"), both of Arlington, Virginia. In addition, Applicants' subsidiary state member bank, United Bank, Fairfax, Virginia ("Fairfax Bank"), has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with VC Bank, with Fairfax Bank as the surviving entity.[2] Fairfax 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 VC Bank.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the Federal Register (78 Federal Register 40739 (2013)) and locally in accordance with the relevant statutes and the Board's Rules of Procedures.[4] 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 was provided to the appropriate banking agency. The time for submitting

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1 12 U.S.C. § 1842.

2 12 U.S.C. § 1828(c). VCB would be merged into GMB.

3 12 U.S.C. § 321.

4 12 CFR 262.3(b).

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.

United, with consolidated assets of approximately $8.5 billion, is the 108th largest insured depository organization in the United States, controlling approximately $6.6 billion in consolidated deposits.[5] United controls two subsidiary banks, Fairfax Bank and United Bank, Inc., Parkersburg, West Virginia ("Parkersburg Bank"), which operate in the District of Columbia, Maryland, Ohio, Pennsylvania, Virginia, and West Virginia.[6] United is the second largest depository organization in West Virginia, controlling deposits of approximately $3.6 billion, and is the 13th largest depository organization in the District of Columbia with approximately $418.7 million in deposits, which represent 11.7 percent and 1.2 percent of the total deposits of insured depository institutions in these jurisdictions, respectively.[7] In addition, United is the 16th largest depository organization in Virginia with approximately $1.8 billion in deposits, the 22nd largest in Maryland with approximately $492.3 million in deposits, the 101st largest in Pennsylvania with approximately $320.2 million in deposits, and the 216th largest in Ohio with approximately $42.6 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in those states, respectively.

VCB, with total consolidated assets of $2.8 billion, controls VC Bank, which operates in Virginia. VC Bank is the 13th largest insured depository institution in Virginia, controlling deposits of approximately $2.2 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

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

[6] Fairfax Bank operates in the District of Columbia, Maryland, and Virginia. Parkersburg Bank operates in Maryland, Ohio, Pennsylvania, and West Virginia.

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

On consummation of this proposal, United would become the 91st largest depository organization in the United States, with total consolidated assets of approximately $11.6 billion.[8] United would control deposits of approximately $8.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Virginia, United would be the seventh largest depository organization, controlling deposits of approximately $4.0 billion, which represent 1.6 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 to whether the transaction is prohibited under state law.[9] 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.[10] 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 applicant controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States.[11]

[8] Pro forma total consolidated assets reflect adjustments associated with fair market value accounting and goodwill.

[9] 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).

[10] 12 U.S.C. § 1842(d)(1)(B).

[11] 12 U.S.C. § 1842(d)(2)(A).

For purposes of the BHC Act, the home state of United is West Virginia,[12] and VCB is located in Virginia.[13] United is well capitalized and well managed under applicable law. Virginia law has no minimum requirements for period of operation,[14] and VC 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, United 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 and the Bank Merger Act prohibit 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. 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.[15]

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[12] 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.

[13] 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).

[14] See VA. CODE § 6.2-704(C) (2013) (permits interstate acquisitions but does not impose a requirement for period of operation).

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

United and VCB compete directly in the Washington, DC-MD-WV-VA banking market.[16] 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 United and VCB,[17] the concentration levels of market deposits and the increase in those levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines"),[18] 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 in this market. On

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[16] The Washington, DC-MD-WV-VA banking market includes the Washington, DC-MD-WV-VA Ranally Metro Area ("RMA"); the non-RMA portions of the counties of Calvert, Charles, Frederick, Prince George's and St. Mary's, Maryland; Fauquier and Loudoun counties, Virginia; Jefferson County, West Virginia; and the Virginia independent cities of Alexandria, Fairfax, Falls Church, and Manassas.

[17] 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).

[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 DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (see Press Release, Department of Justice (August 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.

consummation of the proposal, the banking market would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain.[19]

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 markets in which United and VCB 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 and the Bank Merger Act require the Board to take into consideration a number of other factors in acting on bank acquisition applications.[20] 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

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[19] United is the 16th largest depository institution in the Washington, DC-MD-WV-VA banking market with approximately $2.1 billion in deposits, which represent approximately 1.4 percent of market deposits. VCB is the14th largest depository institution in the same market, controlling deposits of approximately $2.1 billion, which represent approximately 1.4 percent of market deposits. On consummation of the proposed transaction, United would become the ninth largest depository institution in the market, controlling weighted deposits of approximately $4.2 billion, which represent approximately 2.8 percent of market deposits. The HHI would increase by four points to 931, and 82 competitors would remain in the market.

[20] 12 U.S.C. §§ 1842(c)(2)-(3) and 1828(c)(5).

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 all considerations are 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 United, 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. United, Fairfax Bank, and Parkersburg Bank are well capitalized and would remain so on consummation of the proposed acquisition, which is a bank holding company merger, structured as an exchange of shares.[21] United is in satisfactory financial condition, and

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[21] As part of the proposed transaction, each share of VCB common stock would be cancelled and converted into the right to receive United common stock based on an exchange ratio. Additionally, United would assume existing VCB stock options and

the asset quality, earnings, and liquidity of both Fairfax Bank and VC 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 United, VCB, 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.

United, VCB, and their subsidiary depository institutions are each considered to be managed well. United's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of United have substantial knowledge and experience in the banking and financial services sectors.[22] Both the chairman and chief executive officer of United would continue in their roles following consummation of the proposed transaction.

The Board also has considered United's plans for implementing the proposal. United is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal.[23] United would

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would pay the United States Department of the Treasury in full for all of VCB's Troubled Asset Relief Program preferred stock warrants.

[22] On consummation, two current VCB directors would be appointed to United's board, and four current VC Bank directors would be appointed to Fairfax Bank's board.

[23] The company plans to establish various committees comprised of key United and VCB executives with specific areas of expertise and responsibilities to ensure a smooth integration. In addition, United has made significant management and process changes to address the operations of the combined organization, including, for example, increasing the size of its risk-management and audit staff, reorganizing and expanding the

implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective.[24] United's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner. United plans to integrate VC Bank's existing management and personnel in a manner that augments United's management.[25]

United's bank integration 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 United's money laundering policies, are consistent with approval.

B. Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and under the Bank Merger Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[26] 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,

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Information Technology department, and engaging consultants to review and enhance the company's information security and loan operation functions.

[24] United has consolidated its bank-specific risk-management functions into an enterprise-wide system and has increased the size of its risk-management staff to a level commensurate with the operations of the combined organization.

[25] The officers of VC Bank are expected to retain similar positions within the merged bank. The current president and chief executive officer of Fairfax Bank would continue to serve in these positions, while the current president and chief executive officer of VCB and VC Bank would be appointed to serve as "President Emeritus" of Fairfax Bank following the merger.

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

consistent with their safe and sound operation,[27] 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.[28]

The Board has considered all the facts of record, including reports of examination of the CRA performance of Fairfax Bank, Parkersburg Bank, and VC Bank, data reported by Fairfax Bank and VC Bank under the Home Mortgage Disclosure Act ("HMDA"),[29] other information provided by United, confidential supervisory information, and the public comments received on the proposal. Commenters objected to the proposal on the basis of the small business lending record of Fairfax Bank and VC Bank, as well as the mortgage lending records of VC Bank as reflected in 2011 HMDA data.

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.[30] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[31] 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.

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[27] 12 U.S.C. § 2901(b).

[28] 12 U.S.C. § 2903.

[29] 12 U.S.C. § 2801 et seq.

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

[31] 12 U.S.C. § 2906.

CRA Performance of Fairfax Bank.

Fairfax Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Richmond ("Reserve Bank"), as of June 3, 2013 ("Fairfax Bank Evaluation"). Examiners considered Fairfax Bank to have an excellent record of lending inside its assessment areas and noted that the bank's community development lending performance demonstrated responsiveness to community credit needs.[32] Fairfax Bank received an "outstanding" rating on the Lending Test, "high satisfactory" on the Service Test, and "low satisfactory" on the Investment Test.[33]

As described in the Fairfax Bank Evaluation, Reserve Bank examiners found that Fairfax Bank provided a significant level of community development loans and an overall level of qualified community development investments that were responsive to community credit needs. Examiners noted that the bank's delivery systems were accessible and convenient to geographies and individuals of different income levels within the bank's assessment areas. In addition, examiners found that Fairfax Bank had a good record of participating in community development initiatives.

With respect to the Lending Test, examiners noted that the bank is a leader in making community development loans. In particular, examiners noted that the bank had an excellent record of lending within its assessment areas, with good

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32 The Fairfax Bank Evaluation reviewed (i) loan data and community development lending activities reported by Fairfax Bank from January 1, 2011, through December 31, 2012; (ii) qualified community development loans and services consummated or provided from March 28, 2011, through June 3, 2013; and (iii) all qualified investments made from March 28, 2011, through June 3, 2013, or outstanding as of June 3, 2013.

33 The Fairfax Bank Evaluation included a full-scope review of three assessment areas: Washington-Baltimore-Northern Virginia, DC-MD-VA Combined Statistical Area ("Multistate CSA"); Harrisonburg, Virginia Metropolitan Statistical Area; and Augusta County, Virginia Assessment Area. A limited scope review was performed in the Charlottesville, Virginia MSA and the Shenandoah County, Virginia Non-MSA.

distributions of loans across geographies and among borrowers of different income levels. The amount and responsiveness of community development lending in the bank's assessment areas were also key factors in the "outstanding" rating.[34] During the evaluation period, Fairfax Bank extended approximately $39.3 million in community development loans. These loans reflected a variety of community development purposes, such as supporting affordable housing and funding organizations that provided community services or promoted economic development benefiting predominately LMI communities and individuals within the bank's assessment areas.

In the Fairfax Bank Evaluation, while the bank's qualified community investment activities were rated "low satisfactory," examiners found that the bank's overall community development investments were responsive to community credit needs.[35] Fairfax Bank's investments included an equity investment of $2 million in the CRA Fund, which invests in community development projects that provide for the development of LMI areas and the improvement of the quality of life for LMI residents; a $1.5 million commitment in the Franklin Capital Low-Income Housing Tax Credit Fund, which provides rehabilitation financing for several multifamily housing developments in Virginia; and equity investments totaling $3.1 million in the Virginia Community Development Corporation's Housing Equity Fund, which facilitates the development and financing of affordable housing throughout Virginia and utilizes the federal low-income housing tax credit program. In addition, between March 2011 and December 2012, Fairfax Bank donated approximately $124,820 to

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[34] Fairfax Bank's lending is considered highly responsive to community credit needs, with an overwhelming majority of the bank's HMDA loans (approximately 88 percent) and small business loans (approximately 85 percent) originated within its assessment area.

[35] The "low satisfactory" rating on the Investment Test was driven by the bank's performance in its largest assessment area, the Multistate CSA, where the bank held only three investments totaling $595,000 (or 11 percent of its total qualified investments).

support numerous community development organizations whose operations assist LMI individuals and areas.

With respect to the Service Test, examiners stated that the bank had a high level of community development services within its primary market areas. It was noted that Fairfax Bank and its employees actively sought out, and participated in, opportunities that were generally targeted to LMI individuals and areas within the communities the bank served. In addition, Fairfax Bank employees have been involved with organizations that assist small businesses with funding, provide financial literacy training, promote affordable housing opportunities, or support education.

CRA Performance of Parkersburg Bank.

United's lead bank subsidiary, Parkersburg Bank, received an overall "satisfactory" rating at its most recent CRA evaluation by the Reserve Bank on June 3, 2013 ("Parkersburg Evaluation"), with ratings of "high satisfactory" for the Lending Test, "low satisfactory" for the Investment Test, and "outstanding" for the Service Test.[36] Examiners noted that a high percentage of the bank's HMDA, small business, and consumer loans were originated within the bank's assessment areas.

In assigning Parkersburg Bank a "high satisfactory" rating for the Lending Test, Reserve Bank examiners noted that the bank participated in a variety of special lending programs that benefit LMI borrowers and communities. For example, the bank originated 21 loans totaling about $1.4 million during the evaluation period under the Affordable Housing Option loan program, which offers home purchase, refinance, and rehabilitation loans with up to 97 percent financing, and is limited to families whose incomes do not exceed 80 percent of the Department of Housing and Urban

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[36] The Parkersburg Evaluation reviewed HMDA, small business, and consumer lending activity reported by the bank from January 1, 2011, through December 31, 2012. Examiners also considered qualified community development loans originated from March 14, 2011, through June 3, 2013.

Development's median family income for their county of residence.[37] Examiners also noted that Parkersburg Bank made a high level of community development loans (originating or renewing 61 such loans totaling about $18.6 million during the review period), which ultimately benefitted LMI borrowers and communities.

As noted, Parkersburg Bank was assigned a "low satisfactory" on the Investment Test. This rating was driven by the fact that during the review period, the bank had only six qualifying investments totaling $6.8 million, which represented less than 1 percent of the bank's total assets.

On the Service Test, examiners rated the bank's overall performance "Outstanding." The bank's delivery systems, branch locations, and hours of operation were considered accessible and convenient to all portions of the assessment areas. Of the bank's 63 branch offices, 16, or 31.7 percent, were located in LMI areas.

CRA Performance of VC Bank.

VC Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of October 31, 2011 ("VC Bank Evaluation"),[38] with ratings of "low satisfactory" for the Lending Test and "high

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[37] Additionally, as noted in the Parkersburg Evaluation, Parkersburg Bank (1) has extended 166 loans totaling $1.8 million as part of the FHA Title 1 Home Improvement loan program, which offers flexible nontraditional underwriting criteria for home improvement loans; (2) has been involved in eight projects under the Federal Home Loan Bank ("FHLB") Affordable Housing program, which provides grants and loans for new and rehabilitated single- and multifamily housing projects; (3) has provided three eligible small businesses with start-up and expansion funding totaling $320,000 under the FHLB Banking on Business program; and (4) has provided 36 veterans with more than $305,000 in home improvement assistance as part of a partnership with the Atlanta FHLB to provide grants to LMI veterans for eligible home improvement loans.

[38] The VC Bank Evaluation reviewed loan data and small business lending activity reported by Fairfax Bank from January 1, 2009, through December 31, 2010. The evaluation also considered any qualified community development loans, investments, or service activities since the previous evaluation, and all qualified investments outstanding as of October 31, 2011, regardless of when such investments were made.

satisfactory" for the Investment and Service Tests.[39] Examiners also concluded that, while VC Bank maintained a significant level of qualified community development investments, the bank's distribution by borrower income or revenue was only marginally adequate.

With respect to the Lending Test, examiners determined that the bank's loan distribution by borrower income or revenue was marginally adequate and that geographic distribution was poor. However, examiners noted that a substantial majority of the bank's HMDA and small business loans, both by number and volume, were extended within the bank's assessment area. In addition, the bank provided a relatively high level of community development loans (16 loans totaling $36.7 million) within its assessment areas during the review period. These loans contributed significantly to the revitalization of LMI areas, development of affordable housing, provision of community development services, and promotion of small businesses within the assessment areas.

With respect to the Investment Test, examiners noted that VC Bank held 10 qualified community development investments totaling $29.1 million, the majority of which were directed at initiatives to help LMI borrowers in Virginia attain quality, affordable housing. Examiners also determined that the bank's retail banking delivery systems were effective and accessible to all portions of the assessment area, including LMI areas and, consequently, assigned the bank a "high satisfactory" rating under the Service Test.

2. Fair Lending Record

The Board has considered the records of Fairfax Bank, Parkersburg Bank, and VC Bank in complying with fair lending and other consumer protection laws. This includes a review of their performance as detailed in the Fairfax Bank and VC Bank

[39] Ratings for the Lending, Investment, and Service Tests are assigned to an institution based on its performance within an assessment area. For both Fairfax Bank and VC Bank, the Lending Test performance accounts for half of the banks' overall rating, while the Investment and Service Tests each accounted for one quarter of the banks' overall rating.

Evaluations, discussed above. This also includes an evaluation of Fairfax Bank's fair lending policies and procedures. The Board also has taken into account the comments on the application.

United's Fair Lending Program.

United has instituted policies and procedures at Fairfax Bank and Parkersburg Bank 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 (1) procedures to evaluate new laws and regulations to determine applicability to United's mortgage operations, (2) annual fair lending risk assessments to analyze potential vulnerabilities in loan processes and controls, (3) fair lending training for all lending-related employees, (4) comparative loan file reviews, (5) legal and compliance reviews for potential fair lending complaints, and (6) polices requiring a second review of all home mortgage loan applications initially recommended for denial or for approval based on policy exceptions. United also engages in ongoing monitoring and testing, on a regular basis, to ensure compliance with federal and state laws and regulations and internal policies and procedures. Findings from these ongoing efforts are reported to United's board and management and serve as a catalyst for additional training, updating of policies and procedures, and implementing additional controls. United's risk-management systems and its policies and procedures for assuring compliance with fair lending laws would be implemented at the combined organization.

3. <u>HMDA and Small Business Lending Analysis, and Public Comment on the Application</u>

Based on HMDA data from 2011, the commenters alleged that both Fairfax Bank and VC Bank had a poor record of meeting the needs of small businesses in LMI communities compared to the aggregate of lenders in certain assessment areas. The commenters further alleged that in 2011 VC Bank made a lower percentage of mortgage loans to LMI and African American borrowers and in LMI census tracts compared to the aggregate of lenders in certain assessment areas. In addition, commenters questioned the public benefits of the proposal.

The Board has reviewed HMDA and CRA small business lending data from 2011 and 2012 reported by Fairfax Bank, Parkersburg Bank, and VC Bank, the most recent publicly available data. In response to the comments, the Board analyzed data related to all HMDA-reportable loans to develop a view of overall lending patterns by Fairfax Bank, Parkersburg Bank, and VC Bank, even though the commenters did not criticize Fairfax Bank's or Parkersburg Bank's HMDA lending records. The Board focused its analysis on the market areas addressed in the public comments (Northern Virginia; Harrisonburg, Winchester, Augusta County, Staunton, and Waynesboro City, Virginia; and Washington, D.C. MSA).

The commenters asserted that in 2011 Fairfax Bank made 4.9 percent of its small business loans in LMI census tracts in Winchester, Virginia (compared to 10.6 percent for the aggregate) and extended 36.6 percent of such loans to companies with Gross Annual Revenues ("GARs") of $1 million or less in the Washington, D.C. MSA (compared to 45.3 percent for the aggregate). The Board's review confirmed the disparity noted by the commenters.[40] However, the Board's analysis also revealed that Fairfax Bank's small business lending in LMI census tracts improved significantly from 2011 to 2012 in Winchester and other markets of concern to the commenters and was consistent with or exceeded the aggregate's in 2012 in all but the Augusta-Staunton-Waynesboro, Virginia market.

In addition, the percentage of loans to businesses with GARs of $1 million or less was consistent with or exceeded the aggregate for both 2011 and 2012 in the Winchester, Harrisonburg, and Augusta-Staunton-Waynesboro, Virginia MSAs. Such

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40 Fairfax Bank conducted a CRA Self Evaluation in June 2012, which noted the same deficiencies indicated by the commenters. In response to this internal evaluation, Fairfax Bank increased its percentage of small business loans to LMI census tracts in Winchester, Virginia from 4.9 percent in 2011 to 30.4 percent in 2012.

small business lending also increased slightly in the Washington, D.C. market in 2012, although it still lagged the aggregate. Importantly, when small business lending in the Washington, D.C. MSA was considered without regard to the size of business revenue, Fairfax Bank compared favorably to the aggregate, with 29.2 percent of the bank's loans made to small businesses (regardless of revenue amount) compared to just 12.6 percent for the aggregate.

The Board's review of Fairfax Bank's 2011 and 2012 HMDA data showed that, in both years, the bank exceeded the aggregate in the percentage of HMDA loans made in LMI tracts in its combined assessment area, as well as in the Winchester and Harrisonburg, Virginia and the Washington, D.C. MSAs. The data also showed Fairfax Bank's HMDA lending to LMI borrowers was consistent with or exceeded the aggregate in all the MSA's except Harrisonburg, Virginia in 2012, where lending to LMI borrowers nevertheless showed significant improvement from 2011 to 2012.

With respect to VC Bank, the commenters asserted that in 2011, compared to the aggregate of lenders in Northern Virginia, the bank made fewer home mortgage loans to LMI borrowers (23.5 percent for the aggregate compared to the bank's 12.7 percent) and to LMI neighborhoods (7.4 percent for the aggregate compared to the bank's 4.4 percent). The commenters also asserted that VC Bank made 1.7 percent of its home mortgage loans to African Americans borrowers in Northern Virginia during 2011, compared to 5.2 percent for the aggregate. Furthermore, commenters stated that only 4.6 percent of VC Bank's small business loans were extended in LMI census tracts in 2011 in Northern Virginia compared to 8.69 percent for the aggregate. The Board's analysis confirmed that VC Bank lagged the aggregate in mortgage lending to LMI and African American borrowers and LMI communities in Northern Virginia in 2011. The analysis also showed that the bank's mortgage lending continued to lag the aggregate in 2012.

The data shows, however, that there was significant improvement from 2011 to 2012 in the number of mortgage loan applications from, and originations to, LMI and African American borrowers, residents in minority census tracts, and in LMI census tracts. For example, in 2011, VC Bank received a total of six mortgage applications (or 1.4 percent of applications) from African Americans and originated all six (or 1.5 percent of loans). In 2012, the bank received 15 mortgage loan applications from African Americans (or 2.2 percent of applications) and originated 14 (or 2.2 percent of loans). Similarly, in 2012, VC Bank improved its small business lending in minority census tracts and closely approximated the aggregate in LMI census tracts and to businesses with GARs of $1 million or less.[41]

Since 2011, VC Bank has made an effort to increase lending to LMI neighborhoods and small business in LMI communities and to increase home mortgage lending to LMI and African American borrowers. In particular, the bank adopted the "In Reach" program, which provides portfolio mortgage loans at below market 30-year fixed rates for owner-occupied Northern Virginia residences at a 97 percent loan-to-value ratio for loans up to $417,000, and at a 95 percent loan-to-value ratio for loans up to $500,000, with no income limits for homes within LMI areas. The program has more than doubled the number and dollar amount of VC Bank's home loans to LMI borrowers in Northern Virginia between 2011 (40 loans totaling $8.8 million) and 2012 (93 loans totaling $20.1 million). Similarly, VC Bank more than doubled the number and dollar amount of its home loans in LMI communities between 2011 (15 loans totaling $5.8 million) and 2012 (48 loans totaling $11.8 million).[42]

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[41] One commenter expressed continuing concerns about VC Bank's lending to LMI and African American borrowers and asserted that both banks have work to do to serve all communities in their service areas. This same commenter acknowledged and commended specific progress made by both Fairfax Bank and VC Bank to improve their HMDA and small business lending. In particular, the commenter praised Fairfax Bank for its significant progress in improving small business lending to businesses with GARs of $1 million or less in Washington, D.C. and to LMI communities outside of Washington, D.C.

[42] One commenter has commended VC Bank for the increase in lending to LMI neighborhoods and small business in LMI communities, and the increase in home

The Board is concerned when HMDA data for an institution indicate disparities in lending and 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. Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether Fairfax Bank and VC Bank have excluded or denied credit to any group on a prohibited basis.[43]

Because of the limitations of HMDA data, the Board also has considered other information, including examination reports that provide on-site evaluations by the Reserve Bank of compliance by Fairfax Bank, Parkersburg Bank, and VC Bank with fair lending laws and regulations. Fairfax Bank, Parkersburg Bank, and VC Bank also have provided the Board with detailed information on their training, marketing, advertising, and centralized underwriting programs, which reflect the companies' commitment to the prevention of prescreening, discouragement, or exclusion of credit applications on a prohibited basis. The Board also considered information showing the actual reasons for credit decisions.

The Reserve Bank's analysis showed that the marketing programs of Fairfax Bank, Parkersburg Bank, and VC Bank were inclusive and unbiased and did not discourage minority applicants. Moreover, the analysis by the Reserve Bank

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mortgage lending to LMI and African American borrowers through the adoption of the In Reach program.

[43] 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 whether an applicant who was denied credit was, in fact, creditworthy. 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.

showed that the banks involved consistently adhered to their underwriting guidelines and procedures, which are designed to ensure individual credit decisions are made on a non-discriminatory basis (*e.g.*, credit history, inadequate collateral, and debt-to-income ratio).

The Board notes the progress that United made in its lending performance against the aggregate from 2011 to 2012 and encourages United to continue this positive trend. To that end, United has committed that, at the next CRA examination following consummation of the merger with VCB and consistent with the combined organization's capacity and opportunities for making qualified lending and investments, the combined organization will demonstrate that it has engaged in levels of qualified lending and investments, home mortgage lending, small business lending, and community development lending and investments in low- and moderate-income communities in the Northern Virginia portion of United's Multistate CSA assessment area, that exceed United's improved performance in 2012. In addition, within thirty (30) days of consummation, United will develop a program, to apply across all assessment areas of the combined organization, with the objective of producing results exceeding United's improved performance in 2012. United will submit the program to the Reserve Bank for review and implement the program across the combined organization's assessment areas.

4. <u>Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization</u>

The Board has considered the extent to which the proposal would benefit the customers of Fairfax Bank, VC Bank, or both.[44] Such benefits can include

[44] The commenters alleged that the proposal would not provide a clear or significant public benefit. One commenter specifically urged that to satisfactorily demonstrate the public benefits of the proposal, United should, among other things, commit to make more community development lending and investments in LMI communities in the combined organization's service areas. However, 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. <u>See, e.g.</u>, FirstMerit Corporation, FRB Order No. 2013-3 (March 22, 2013).

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.

United represents that the proposal would result in cost savings for the combined organization by consolidating redundant functions, including data processing. United 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 meeting the banking needs of its customers.

United also states that the proposal would offer customers convenience through a broader range of financial products. The merger would benefit VC Bank's customers with access to new products and services in the following areas: trust and estate services, retail checking and savings, business checking products services, cash management, credit cards, and consumer and commercial lending. In addition, the merger would enhance the suite of secondary market loan products and portfolio loan offerings to both Fairfax Bank's and VC Bank's noncommercial borrowers. For example, Fairfax Bank would introduce the United States Department of Agricultural Rural Development loan program to VC Bank clients, an option not currently available to these clients. Likewise, VC Bank would bring its CRA loan products to Fairfax Bank, thus expanding the products available to the latter's customers.

The merger also would benefit current customers of VC Bank through access to significantly larger branch and ATM networks. The branch network available to current VC Bank customers would increase from 28 to 136 branch locations throughout Virginia, West Virginia, Ohio, Maryland, Pennsylvania, and Washington, D.C. Similarly, the number of ATMs that VC Bank customers could access would increase from 29 to 197 locations throughout the same jurisdictions. United suggests that the expanded ATM network would offer greater access to current VC Bank customers located in LMI and middle income areas. In this regard, United represents that 28 percent of its ATM transactions are from ATMs in LMI and middle-income distressed census tracts. United further notes that its ATMs offer a Spanish language option.

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 United, confidential supervisory information, and the public comments on the proposal. Based on the Board's analysis of the HMDA data, its evaluation of the mortgage and small business lending operations and compliance programs of Fairfax Bank, Parkersburg Bank, and VC Bank, and its 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 United 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."[45]

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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[45] 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.[46] 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.[47]

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, United would have approximately $11.6 billion in consolidated assets, and, by any of a number of alternative measures of firm size, United 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 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. 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, United'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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[46] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[47] 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.

Other Considerations

Fairfax Bank also has applied under section 9 of the FRA to establish and operate branches at the locations of the main office and branches of VC Bank. The Board has assessed the factors it is required to consider when reviewing an application under section 9 of the FRA and 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 application should be, and hereby is, approved.[48] In reaching its

[48] 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.

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 United 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, including the submission and implementation of the program for improved performance. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors,[49] effective December 12, 2013.

Margaret McCloskey Shanks (signed)

Margaret McCloskey Shanks
Deputy Secretary of the Board

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