

FEDERAL RESERVE SYSTEM

Sunflower Reincorporation Sub, Inc.
Salina, Kansas

Order Approving the Formation of a Bank Holding Company, the Acquisition of a Bank Holding Company, and Determination on a Financial Holding Company Election

Sunflower Reincorporation Sub, Inc. (“FirstSun”),¹ a wholly owned subsidiary of Sunflower Financial, Inc. (“Sunflower”), a financial holding company, has requested the Board’s approval under section 3 of the Bank Holding Company Act of 1956 (“BHC Act”)² to become a bank holding company by merging with Sunflower and thereby indirectly acquiring Sunflower Bank, National Association (“Sunflower Bank”), all of Salina, Kansas.³

In addition, FirstSun has requested the Board’s approval under section 3 of the BHC Act to acquire Strategic Growth Bank Incorporated and Strategic Growth Bancorp Incorporated (collectively, “Strategic”), both financial holding companies of El Paso, Texas, and thereby indirectly acquire Capital Bank, SSB (“Capital Bank”), El Paso, Texas, and First National Bank of Santa Fe (“First National Bank”), Albuquerque, New Mexico. Following the proposed holding company mergers, Capital Bank and First National Bank would be merged into Sunflower Bank.⁴ FirstSun also has

¹ The application was submitted, and notice of the proposal published, under the name Sunflower Reincorporation Sub, Inc. Subsequently, the name of this entity was changed to FirstSun Capital Bancorp.

² 12 U.S.C. § 1842.

³ FirstSun would survive the merger.

⁴ The merger of Capital Bank and First National Bank with and into Sunflower Bank is subject to the approval of the Office of the Comptroller of the Currency (“OCC”) pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The OCC approved the merger on November 10, 2016.

filed with the Board an election to become a financial holding company pursuant to sections 4(k) and (l) of the BHC Act and section 225.82 of the Board's Regulation Y.⁵

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 Federal Register 72055 (October 19, 2016)) in accordance with the Board's rules.⁶ 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.

Sunflower, with consolidated assets of approximately \$1.9 billion, is the 411th largest insured depository organization in the United States. Sunflower controls approximately \$1.5 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁷ Sunflower controls Sunflower Bank, which operates in Colorado, Kansas, and Missouri. Sunflower Bank is the 32nd largest insured depository institution in Colorado, controlling deposits of approximately \$349.7 million, which represent 0.29 percent of the total deposits of insured depository institutions in that state.⁸

Strategic, with consolidated assets of approximately \$2.2 billion, is the 374th largest insured depository organization in the United States. Strategic controls approximately \$1.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Strategic controls Capital Bank, which operates in Texas, and First National Bank, which operates in Colorado and New Mexico. First National Bank is the 31st largest insured depository institution in Colorado, controlling deposits of approximately \$356.6 million, which represent 0.29 percent of the total deposits in that state.

⁵ 12 U.S.C. §§ 1843(k) and (l); 12 CFR 225.82.

⁶ 12 CFR 262.3(b).

⁷ National asset and deposit data are as of December 31, 2016, unless otherwise noted.

⁸ State deposit data are as of June 30, 2016. In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

On consummation of this proposal, FirstSun would become the 240th largest depository organization in the United States, with consolidated assets of approximately \$4.0 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. FirstSun would control consolidated deposits of approximately \$3.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In Colorado, FirstSun would become the 25th largest depository institution, controlling deposits of approximately \$706.2 million, which represent 0.58 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.⁹ Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for less than the state statutory minimum period of time or five years.¹⁰ In addition, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, the bank holding company upon consummation would control 30 percent or more of the total deposits of insured depository institutions in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.¹¹

⁹ 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) and (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located

For purposes of the BHC Act, the home state of FirstSun is Kansas, the home state of Capital Bank is Texas, and the home state of First National Bank is New Mexico.¹² Upon consummation of the transactions, FirstSun would be well capitalized and well managed under applicable law, and Sunflower Bank has a “Satisfactory” rating under the Community Reinvestment Act of 1977 (“CRA”).¹³ There are no minimum age requirements under the laws of Texas or New Mexico that apply to FirstSun’s acquisition of Strategic’s subsidiary banks.¹⁴

On consummation of the proposed transactions, FirstSun would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, the combined organization would control less than 30 percent of the total amount of deposits of insured depository institutions in Colorado, the only state in which FirstSun and Strategic have overlapping banking operations. The Board has considered all other requirements applicable under section 3(d) of the BHC Act, including Sunflower’s record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

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

and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. See 12 U.S.C. § 1841(o)(4)–(7).

¹² See 12 U.S.C. § 1841(o)(4). A bank holding company’s home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A national bank’s home state is the state in which the main office of the bank is located.

¹³ 12 U.S.C. § 2901 et seq.

¹⁴ See Tex. Fin. Code Ann. § 203.003; N.M. Stat. Ann. § 58-26-4.

the business of banking in any relevant market.¹⁵ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁶

Sunflower and Strategic have subsidiary depository institutions that compete directly in the Denver-Boulder, Colorado, banking market (“Denver market”).¹⁷ The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative share of total deposits in insured depository institutions in the market (“market deposits”) that FirstSun would control;¹⁸ the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹⁹ and other characteristics of the market.

¹⁵ 12 U.S.C. § 1842(c)(1).

¹⁶ 12 U.S.C. § 1842(c)(1)(B).

¹⁷ The Denver market is defined as the Denver metropolitan area in Boulder County, portions of Adams and Arapahoe counties, and the towns of Frederick and Keenesburg in Weld County, all in Colorado.

¹⁸ Local deposit and market share data are as of June 30, 2016, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

¹⁹ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Denver market. On consummation of the proposal, the Denver market would remain moderately concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in this market would be small, and numerous competitors would remain in the banking market.²⁰

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. 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 Denver market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. See Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

²⁰ Sunflower operates the 48th largest depository institution in the Denver market, controlling approximately \$56.6 million in deposits, which represent 0.07 percent of market deposits. Strategic operates the 23rd largest depository institution in the same market, controlling deposits of approximately \$333.1 million, which represent about 0.40 percent of market deposits. On consummation of the proposed transaction, FirstSun would become the 23rd largest depository organization in the market, controlling deposits of approximately \$389.7 million, which represent approximately 0.47 percent of market deposits. The HHI for the Denver market would increase by less than 1 point and remain at 1295, and 75 competitors would remain in the market.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.²¹ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Sunflower and Strategic are both well capitalized, and FirstSun would become so on consummation of the proposed transactions. The proposed transactions are structured primarily as stock exchanges.²² The asset quality, earnings, and liquidity of

²¹ 12 U.S.C. §§ 1842(c)(2), (5), and (6).

²² To effect the transactions, Sunflower would first merge with and into FirstSun, with shares of Sunflower primarily being converted into the right to receive shares of FirstSun, based on an exchange ratio. Immediately following Sunflower's merger with FirstSun, Strategic would merge with and into FirstSun. To effect this transaction, shares of Strategic will primarily be converted into the right to receive shares of FirstSun, based on an exchange ratio. Because the shares issued as part of the mergers will not be registered under the Securities Act of 1933, shareholders who are not accredited investors, as defined in section 4(a)(2) of the Act and Rule 506 of the Securities Exchange Commission's Regulation D, would receive cash rather than stock. FirstSun has the financial resources to fund the transaction.

Sunflower Bank, Capital Bank, and First National Bank are consistent with approval, and FirstSun appears to have adequate resources to absorb the costs of the proposals and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization, as well as public comments received on the proposals. In this case, the Board received two comments objecting to the proposals based on concerns regarding the management of Sunflower and Strategic and the future management of FirstSun. The commenters primarily focused on the roles and managerial abilities of two individuals, both of whom would be members of the future management of FirstSun.

In particular, commenters expressed concerns regarding an individual who currently serves as a consultant to Sunflower, alleging that this individual has exceeded their role as a consultant and has been responsible for major decisions at Sunflower. Based on this individual's experience with other financial institutions, commenters also expressed concerns regarding this individual's managerial abilities. Commenters also expressed concerns regarding the managerial abilities and character of a current executive officer of Sunflower. One commenter also expressed concern that the management of Sunflower has taken control of Strategic prior to the Board's approval.

In considering the managerial resources of the institutions involved, the Board considered information provided by commenters, the relevant institutions, and the individuals. Sunflower and Strategic represent that the officers and directors of Strategic have continued to carry out their duties at Strategic during the pendency of the application without control by Sunflower. The management of Sunflower also asserts that its management, and not the consultant, has retained all authority to make decisions at Sunflower, including the authority to commit Sunflower to any transactions and to approve risk management limits and controls. Sunflower represents that the consultant's role is confined to supporting operational and strategic planning at Sunflower.

In evaluating the managerial resources and character of the proposed management of FirstSun, the Board also has taken account of confidential supervisory information regarding Sunflower and Strategic and the individuals, as well as other regulators' supervisory experiences with the principals of Sunflower and Strategic. The Board also has considered the institutions' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws. In particular, the Board has reviewed the examination records of Sunflower, Strategic, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered both its supervisory experiences with the individuals referenced by the commenters, as well as the supervisory experiences of other relevant bank supervisory agencies with these individuals.

FirstSun's directors and officers would have the experience and resources to ensure that the combined organization operates in a safe and sound manner. Sunflower's directors and senior executive officers, who would fill the majority of the director and officer positions at FirstSun, have substantial knowledge of and experience in the banking and financial services sectors. Strategic's directors and senior officers, who would fill the remaining director and officer positions at First Sun, also have substantial knowledge of and experience in the banking and financial services sectors. Further, FirstSun's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered FirstSun's plans for implementing the proposal. FirstSun has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. FirstSun represents that, following consummation of the anticipated bank mergers, it would implement its risk-management policies, procedures, and controls at the combined organization. These policies, procedures, and controls are considered satisfactory from a supervisory perspective.

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

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²³ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²⁴ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²⁵

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

²³ 12 U.S.C. § 1842(c)(2).

²⁴ 12 U.S.C. § 2901(b).

²⁵ 12 U.S.C. § 2903.

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

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Sunflower Bank, Capital Bank, and First National Bank; the consumer compliance records of the involved banks; confidential supervisory information; and information provided by FirstSun.

Records of Performance Under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.²⁶ 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.²⁷ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.²⁸

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in

²⁶ See Interagency Questions and Answers Regarding Community Reinvestment, 81 Federal Register 48506, 48548 (July 25, 2016).

²⁷ 12 U.S.C. § 2906.

²⁸ See Interagency Questions and Answers Regarding Community Reinvestment, 81 Federal Register 48506, 48548 (July 25, 2016).

helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act ("HMDA"),²⁹ in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution of the institution's lending in its assessment areas and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;³⁰ (4) the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

CRA Performance of Sunflower Bank

Sunflower Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of March 31, 2014 ("Sunflower

²⁹ 12 U.S.C. § 2801 et seq.

³⁰ Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less; small business and small farm loans by loan amount at origination; and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. See, e.g., 12 CFR 228.22(b)(3).

Bank Evaluation”).³¹ The bank received a “High Satisfactory” rating for the Service Test, a “Low Satisfactory” rating for the Lending Test, and a “Needs to Improve” for the Investment Test.

Examiners found that Sunflower Bank’s overall home mortgage lending activity was good and that the borrower distribution of these loans was adequate. According to examiners, the bank’s level and borrower distribution of small loans to farms was good, but the geographic distribution of these loans was poor. Examiners further noted that the bank’s level of small loans to businesses was adequate and that the geographic distribution of these loans was excellent. Examiners observed that the borrower distribution of small loans to businesses was good. Although examiners observed an overall poor level of qualified investments and donations, examiners noted that the bank’s delivery systems provided good access to LMI geographies and individuals. Examiners also noted that, overall, the bank’s level of community development services was adequate.

Sunflower Bank was assigned an overall rating of “Satisfactory” in the state of Kansas, the area weighted most heavily by examiners due to Sunflower Bank’s level of activity in that state. In Kansas, Sunflower Bank’s performance on the Lending Test was rated “Satisfactory.” Examiners found that the bank’s overall lending activity in the bank’s non-metropolitan assessment area was excellent and that the overall borrower

³¹ The Sunflower Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home purchase, home improvement, and home refinance mortgage loans, and small business and small farm loans, for the period between January 1, 2010, and December 31, 2012. The evaluation period for community development lending, investments, and services was July 20, 2011, through March 31, 2014.

The Sunflower Bank Evaluation included full-scope evaluations of the bank’s non-metropolitan assessment areas in Kansas, Missouri, and Colorado. In each of these states, data for non-metropolitan areas was aggregated to form one non-metropolitan assessment area for the purpose of analysis in that state. The Sunflower Bank Evaluation also included full-scope evaluations of the Pueblo, Colorado, Metropolitan Statistical Area (“MSA”). Limited-scope evaluations were performed in four metropolitan assessment areas in Kansas: Wichita, Manhattan, Lawrence; and Topeka.

distribution was adequate. On the Investment Test, Sunflower Bank was rated “Needs to Improve” based on the bank’s level of qualified investments and donations, while on the Service Test, examiners rated the bank’s performance as “High Satisfactory.” In the bank’s non-metropolitan assessment area, examiners noted that the bank’s service delivery systems were readily accessible to geographies and individuals of different income levels and that the bank provided a good level of community development services.

CRA Performance of First National Bank

First National Bank was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the OCC, as of March 31, 2016 (“First National Bank Evaluation”).³² The bank received “High Satisfactory” ratings for both the Service Test and Investment Test and a “Low Satisfactory” rating for the Lending Test.

Examiners found that the First National Bank originated a substantial majority of loans inside its assessment areas. Examiners also found that the bank made a relatively high level of community development loans in the states of New Mexico and Colorado, which had a positive impact on the bank’s CRA performance in those states. According to examiners, the volume of the bank’s qualified investments was significant

³² The First National Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home purchase, home improvement, and home refinance mortgage loans reported pursuant to HMDA, and small business loans reported under CRA data collection requirements, for the period between January 1, 2014, and December 31, 2015. The evaluation period for community development lending, investments, and services was March 31, 2013, through March 31, 2016.

The First National Bank Evaluation included full-scope reviews of the bank’s Albuquerque (Bernalillo County), Santa Fe MSA and Denver-Aurora-Lakewood MSA assessment areas. Limited-scope reviews were conducted of the bank’s Las Cruces MSA, Boulder MSA, Fort Collins MSA, and of its Los Alamos County and Lincoln County assessment areas.

relative to the investment opportunities and identified needs of the bank's assessment areas. Examiners noted that the borrower distribution of HMDA loans in the bank's Albuquerque and Santa Fe assessment areas was poor. However, examiners found that First National Bank's branches were accessible to geographies and individuals of all income levels and that the bank provided a relatively high level of community development services.

Examiners weighted the First National Bank's performance in the Santa Fe assessment area most heavily, given the level of the bank's activities in that area. In the Santa Fe assessment area, examiners considered First National Bank's community development lending to be excellent. In addition, examiners considered the bank's branches in this area to be reasonably accessible to geographies and individuals of all incomes. Although examiners found the bank's lending activity in the Santa Fe assessment area to be poor, examiners also noted that the bank's poor record of lending activity throughout New Mexico was mitigated by the economic conditions and the bank's strategic initiatives during the evaluation period.

CRA Performance of Capital Bank

Capital Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation, as of April 4, 2011 ("Capital Bank Evaluation").³³

³³ The Capital Bank Evaluation was conducted using Small Institution CRA Examination Procedures, which evaluate (1) the institution's loan-to-deposit ratio and other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments; (2) the percentage of loans and other lending-related activities located in the bank's assessment areas; (3) the bank's record of lending to and engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes; (4) the geographic distribution of the bank's loans; and (5) the bank's record of taking action in response to written complaints about its performance in helping to meet credit needs in its assessment areas. See, e.g., 12 CFR 228.26(b). The Capital Bank Evaluation reviewed the bank's CRA activities for the period between July 17, 2006, and April 4, 2011. In particular, examiners also considered a sample of small business loans originated during the period

Examiners determined that Capital Bank's loan-to-deposit ratio was reasonable given the institution's size and financial condition. Examiners further noted that, despite economic conditions in the area, Capital Bank continued to meet the credit needs of its community by extending loans. According to examiners, the bank exhibited an excellent record of concentrating its loans inside its assessment area, particularly with respect to small business and residential mortgage loans. Examiners also found that the geographic distribution of the bank's loans reflected reasonable dispersion throughout the bank's assessment area. In particular, examiners considered the bank's records of small business and home mortgage lending in LMI geographies to be reasonable. Likewise, examiners found that borrower distribution of small business and residential mortgage loans reflected a reasonable penetration to borrowers of different income levels. Further, examiners noted that Capital Bank did not receive any CRA complaints during the assessment period.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. FirstSun represents that upon consummation of the proposals, existing customers of Capital Bank and First National Bank would have access to a more expansive line of products and services. FirstSun also represents that the acquisition would make available expanded resources to the communities currently served by Sunflower Bank, Capital Bank, and First National Bank. FirstSun also represents that the proposed transactions would expand the retail outlets available to customers of all three institutions.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance

between May 22, 2008, and January 27, 2011, as well as home mortgage loans recorded on the bank's 2009 and 2010 HMDA Loan Application Registers. The Capital Bank Evaluation included a full-scope review of the bank's El Paso MSA (El Paso County) assessment area.

with consumer protection laws, confidential supervisory information, information provided by FirstSun, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended section 3 of the BHC Act to require the Board to consider a proposal’s risk “to the stability of the United States banking or financial system.”³⁴

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.³⁵ 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.³⁶

³⁴ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601 (2010), codified at 12 U.S.C. § 1842(c)(7).

³⁵ Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

³⁶ For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order 2012-2 (February 14, 2012).

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.³⁷

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that has less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. The acquirer would be and the targets are predominately engaged in retail commercial banking activities.³⁸ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or be so interconnected with other firms or the markets that it would pose significant risk to the financial system in the event of financial distress.

³⁷ See People's United Financial, Inc., FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding these presumptions, the Board has the authority to review the financial stability implications of any proposal. For example, any acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

³⁸ Sunflower primarily offers commercial and retail banking services, mortgage banking services, commercial real estate lending, investment advisory and management services, trust services and operations, wealth management services, and treasury services. Strategic also offers commercial and retail banking services, as well as treasury management services, private banking, mortgage banking services, and wealth management services. In each of these activities, the involved institutions have, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

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

Financial Holding Company Election

As noted, FirstSun has elected to become a financial holding company in connection with the proposals. FirstSun has certified that, upon consummation of the proposals, FirstSun and the depository institutions it would control would be well capitalized and well managed, and has provided all the information required under the Board's Regulation Y.³⁹ Based on all the facts of record, the Board determines that FirstSun's election will become effective upon consummation of the proposal if, on that date, FirstSun is well capitalized and well managed and all depository institutions it controls are well capitalized, well managed, and have CRA ratings of at least "Satisfactory."

Conclusion

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

³⁹ See Dodd-Frank Act § 606(a), 124 Stat. at 1607, amending 12 U.S.C. § 1843(l)(1).

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

By order of the Board of Governors,⁴⁰ effective June 2, 2017.

Ann E. Misback (signed)

Ann E. Misback
Secretary of the Board

⁴⁰ Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Powell and Brainard.