FRB Order No. 2019-11
July 16, 2019

FEDERAL RESERVE SYSTEM

Chemical Financial Corporation
Detroit, Michigan

Order Approving the Acquisition of a Bank Holding Company

Chemical Financial Corporation ("Chemical"), Detroit, Michigan, a financial holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] has requested the Board's approval under section 3 of the BHC Act[2] to acquire TCF Financial Corporation ("TCF"), Wayzata, Minnesota, and thereby indirectly acquire TCF National Bank ("TCF Bank"), Sioux Falls, South Dakota.[3] Following the proposed acquisition, Chemical's subsidiary state member bank, Chemical Bank, Detroit, Michigan, would be merged with and into TCF Bank, with TCF Bank as the surviving entity.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (84 Federal Register 10826 (March 22, 2019)).[5] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

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1 12 U.S.C. § 1841 et seq.

2 12 U.S.C. § 1842.

3 The resultant institution would be renamed TCF Financial Corporation upon consummation of the transaction.

4 The merger of Chemical Bank into TCF Bank is subject to approval by the Office of the Comptroller of the Currency ("OCC"), pursuant to section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act"). 12 U.S.C. § 1828(c). The OCC approved the bank merger on June 20, 2019.

5 See also 12 CFR 262.3(b).

Chemical, with consolidated assets of approximately $21.5 billion, is the 86th largest depository organization in the United States. Chemical controls approximately $15.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[6] Chemical controls Chemical Bank, which operates in Michigan, Ohio, and Indiana. Chemical Bank is the seventh largest depository institution in Michigan, controlling deposits of approximately $13.1 billion, which represent 6.0 percent of the total deposits of insured depository institutions in that state.[7]

TCF, with consolidated assets of approximately $23.7 billion, is the 80th largest depository organization in the United States. TCF controls approximately $19.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. TCF controls TCF Bank, which operates in Illinois, Minnesota, Michigan, Colorado, Wisconsin, South Dakota, and Arizona. TCF Bank is the 10th largest depository institution in Michigan, controlling deposits of approximately $3.2 billion, which represent 1.5 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Chemical would become the 51st largest insured depository organization in the United States, with consolidated assets of approximately $45.2 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Chemical would control approximately $34.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Michigan, Chemical would become the sixth largest insured depository organization, controlling deposits of approximately $16.3 billion, which represent 7.5 percent of the total deposits of insured depository institutions in that state.

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[6] National asset data and national deposit, ranking, and market-share data are as of December 31, 2018, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

[7] State deposit data are as of June 30, 2018, unless otherwise noted.

Interstate 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 that is well capitalized and well managed to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.[8] The Board (1) may not approve an application that would permit an out-of-state bank holding company or bank to acquire a bank in a host state if the target bank has not been in existence for the lesser of the state statutory minimum period of time or five years;[9] (2) must take into account the record of the applicant bank under the Community Reinvestment Act of 1977 ("CRA")[10] and the applicant's record of compliance with applicable state community reinvestment laws;[11] and (3) may not approve an interstate application if the bank holding company or resulting bank, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States[12] or, in certain circumstances, if the bank holding company or resulting bank, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.[13]

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[8] 12 U.S.C. § 1842(d)(1)(A). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of each 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 bank's main office is located. See 12 U.S.C. § 1841(o)(4).

[9] 12 U.S.C. § 1842(d)(1)(B).

[10] 12 U.S.C. § 2901 et seq.

[11] 12 U.S.C. § 1842(d)(3).

[12] 12 U.S.C. § 1842(d)(2)(A).

[13] 12 U.S.C. § 1842(d)(2)(B). For purposes of section 3(d) of the BHC Act, the acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. The Board considers a bank

For purposes of the BHC Act, the home state of Chemical is Michigan. TCF is located in Arizona, Colorado, Illinois, Michigan, Minnesota, South Dakota and Wisconsin. Chemical is well capitalized and well managed under applicable law, and Chemical Bank has a satisfactory CRA rating and is in compliance with applicable state community reinvestment laws. In addition, TCF Bank has been in existence for more than five years.

On consummation of the proposed transaction, Chemical would control less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In addition, Chemical would control approximately $16.3 billion of the total amount of deposits of insured depository institutions in Michigan, the only state in which Chemical and TCF have overlapping banking operations. Michigan has no limit on the total amount of in-state deposits that a single banking organization may control, and Chemical's percentage of deposits would not exceed 30 percent of the total amount of in-state deposits.[14] The Board has considered all other requirements under section 3(d) of the BHC Act. Accordingly, in light of all the facts of record, the Board determines that it is not prohibited by section 3(d) of the BHC Act from approving the proposal.

Competitive Considerations

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

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located in any state in which the bank is chartered, headquartered, or operates a branch. See 12 U.S.C. § 1841(o)(4)-(7).

[14] Mich. Comp. Laws § 487.11104(8) (2019).

[15] 12 U.S.C. § 1842(c)(1)(A).

clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.[16]

Chemical and TCF have subsidiary banks that compete directly in the Detroit, Michigan, banking market ("Detroit market").[17] The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the relative share of total deposits in insured depository institutions in the market ("market deposits") that Chemical would control;[18] the concentration level of market deposits and the increase in this level, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[19] the number of competitors that would remain in the market; and other characteristics of the market.

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[16] 12 U.S.C. § 1842(c)(1)(B).

[17] The Detroit market is defined as Oakland; Macomb; Wayne; Lapeer; Genesee; Washtenaw; St. Clair; Livingston; Lenawee; Shiawassee; Monroe (except Whiteford, Bedford, and Erie townships); and Sanilac (except Greenleaf, Austin, Argyle, Moore, Minden, Wheatland, Delaware, and Forester townships) counties, all in Michigan.

[18] Deposit and market share data are as of June 30, 2018, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989) and National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

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

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Detroit market. On consummation of the proposal, the Detroit market would remain moderately concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in this banking market would be small, and numerous competitors would remain in this 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 Detroit market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and future prospects of the institutions

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modified. See Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[20] Chemical operates the ninth largest depository institution in the Detroit market, controlling deposits of approximately $3.5 billion, which represent approximately 2.4 percent of market deposits. TCF operates the 10th largest depository institution in that market, controlling deposits of approximately $3.2 billion, which represent approximately 2.2 percent of market deposits. On consummation of the proposal, Chemical would become the seventh largest depository organization in the market, controlling deposits of approximately $6.7 billion, which represent approximately 4.6 percent of market deposits. The HHI for the Detroit market would increase by 11 points to 1449, and 52 competitors would remain in the market.

involved, as well as the effectiveness of the institutions in combatting money laundering.[21] In its evaluation of the financial factor, 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, liquidity, and earnings performance, as well as the 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 effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Chemical, TCF, and their subsidiary depository institutions are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured primarily as a share exchange, with a subsequent merger of the subsidiary depository institutions.[22] The asset quality, earnings, and liquidity of both Chemical Bank and TCF Bank are consistent with approval, and Chemical appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions'

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

[22] To effect the transaction, each share of TCF common stock would be converted into a right to receive shares of Chemical common stock, based on an exchange ratio. Any fractional shares of Chemical common stock that would result from this conversion would be exchanged for cash. In addition, each share of TCF preferred stock would be converted into the right to receive one share of a newly created series of Chemical preferred stock. Chemical has the financial resources to effect the proposed transaction.

operations. In addition, the future prospects of the institutions under the proposal are considered consistent with approval.

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

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

The Board also has considered Chemical's plans for implementing the proposal. Chemical and TCF have conducted comprehensive due diligence and are devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. In general, Chemical would implement risk-management policies, procedures, and controls at the combined organization. In addition, management of Chemical and TCF have the experience and resources to operate the combined organization in a safe and sound manner, and Chemical plans to integrate TCF's existing management and personnel in a manner that augments Chemical's management.[23]

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[23] Following consummation of the holding company merger, the board of directors of the resulting holding company would be composed of 16 directors, with eight directors designated by each of Chemical and TCF. The chairman, president, and chief executive

Based on all of the facts of record, including Chemical's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board determines that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Chemical and TCF 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.[24] In its evaluation, 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 these communities, and 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 the institutions' safe and sound operations,[25] 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.[26]

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

officer of TCF would become the chief executive officer of the surviving holding company and bank.

24 12 U.S.C. § 1842(c)(2).

25 12 U.S.C. § 2901(b).

26 12 U.S.C. § 2903.

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

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

Public Comments on the Proposal

The Board received several comments in support of, and three adverse comments on, the proposal. In general, the commenters in support of the proposal believed that Chemical and TCF have a demonstrated record of providing valuable services to their communities.

Of the commenters that opposed the proposal, one commenter alleged disparities in Chemical Bank's home mortgage origination and denial rates in the Detroit–Warren–Dearborn, Michigan Metropolitan Statistical Area ("Detroit MSA") for minority applicants compared to white applicants, based on data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA") for 2017.[27]

Two commenters requested that the application include a forward-looking community benefits plan detailing how Chemical would address CRA-related concerns

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[27] 12 U.S.C. § 2901 et seq. The commenter also noted an ongoing private securities lawsuit against TCF related to the merger. Shareholder litigation is a matter of general corporate law to be adjudicated by courts of competent jurisdiction. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973).

identified by the commenters.[28] One of these commenters expressed concerns about the small business lending record of TCF Bank and access to TCF Bank's branches in LMI and majority-minority areas in Milwaukee County, Wisconsin ("Milwaukee").[29] This commenter also expressed concerns about the fees charged by TCF Bank, specifically alleging that the fees charged to customers in Milwaukee on checking and savings accounts were high and unjustified. In addition, this commenter expressed concerns that TCF Bank does not originate home loans – which the commenter defines to include home purchase, home repair, and refinance loans – to minority borrowers in the same proportions as they are represented in Milwaukee's population.[30]

Another commenter criticized both banks' records of lending to small businesses in several AAs and alleged that the combined bank would have a low number of branches in majority-minority areas. This commenter expressed concerns about Chemical Bank's record of home purchase lending in the Detroit–Dearborn–Livonia, Michigan Metropolitan Division ("Detroit MD") and the Cleveland–Elyria, Ohio MSA ("Cleveland

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[28] The Board consistently has found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any private party. See, e.g., Fifth Third Bancorp, FRB Order 2019-05 at 12 n.30 (March 6, 2019); First Busey Corporation, FRB Order 2019-01 at 11 n.30 (January 10, 2019); HarborOne Mutual Bancshares, FRB Order No. 2018-18 at 10 n.26 (September 12, 2018); TriCo Bancshares, FRB Order No. 2018-13 at 9 n.20 (June 6, 2018); Howard Bancorp, Inc., FRB Order No. 2018-05 at 9 n.21 (February 12, 2018); Huntington Bancshares Inc., FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); CIT Group, Inc., FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); Citigroup Inc., 88 Federal Reserve Bulletin 485 (2002); Fifth Third Bancorp, 80 Federal Reserve Bulletin 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas ("AAs").

[29] This commenter focused on TCF Bank's activities in Milwaukee, noting that Chemical Bank does not have a presence in Wisconsin.

[30] The commenter also encouraged Chemical to collaborate with local community organizations in Milwaukee to improve banking services. This commenter provided a list of suggestions to increase lending activity to LMI individuals and neighborhoods and minority individuals and neighborhoods in Milwaukee.

MSA"), based on HMDA data reported for the years 2015 through 2017. The commenter also raised concerns about TCF Bank's record of community development loans and investments.

Businesses of the Involved Institutions and Response to the Public Comments

Chemical Bank operates through a network of branches located primarily in Michigan, Northeast Ohio, and Northern Indiana and offers commercial, retail, and fiduciary banking services, as well as insurance, investment, and wealth management services. These products and services include a wide range of deposit products, such as checking and savings accounts, commercial and consumer loans, and commercial and residential real estate lending.

TCF Bank provides commercial and retail banking services on a nationwide basis, including checking and savings accounts; credit and debit cards; check cashing and remittance services; and residential mortgage, consumer, and small business lending. Additionally, TCF Bank provides wholesale banking and enterprise services, such as commercial banking, leasing, and financing, and corporate treasury functions.

In response to the commenter's allegations that Chemical Bank disproportionately denied home purchase loans to African American applicants as compared to white applicants in the Detroit MSA, Chemical represents that the data from that MSA demonstrate that Chemical Bank approved and originated conventional home purchase loan applications at similar rates regardless of an applicant's race. Chemical also represents that Chemical Bank's denial rates for applicants were similar to, or less than, peer institutions in the city of Detroit and the Detroit MSA, including in majority-minority tracts in those areas.

In response to allegations about the home purchase lending record of Chemical Bank, Chemical notes that during the bank's most recent CRA performance examination, examiners determined that Chemical Bank had an adequate distribution of HMDA-reportable loans based on the bank's lending in LMI census tracts and that Chemical Bank's HMDA-reportable home purchase lending performance exceeded that of aggregate lenders in a number of respects in areas referenced by the commenter. In addition, Chemical represents that Chemical Bank monitors lending by racial composition of the census tracts in high minority areas of the bank's AAs to identify lending patterns and create fair lending initiatives, as needed, and ensure the bank remains focused on increasing lending to minority borrowers and in minority tracts through increased CRA activities, branch distribution, and a designated Fair Lending Marketing Plan. Chemical also represents that the combined organization intends to merge the fair lending program of TCF Bank and Chemical Bank and adopt the best practices from each bank's processes, policies, and procedures.

In response to commenters' allegations about Chemical Bank's and TCF Bank's small business lending records, Chemical notes that the banks' most recent CRA performance evaluations found that Chemical Bank exhibited a good record of serving the credit needs of very small businesses and TCF Bank exhibited a good distribution of small business loans. In addition, Chemical states that TCF Bank's geographic distribution of small business loans was found to be excellent in the state of Wisconsin, which includes Milwaukee, an area of concern for a commenter, and Chemical highlights additional small business lending since the bank's most recent CRA performance evaluation. Chemical also states that it is committed to small business lending, and it expects that the combined organization's small business lending performance will reflect the strong record of both banks. Additionally, Chemical cites community service, outreach events, and minority-specific advertisement campaigns as evidence of efforts to increase minority lending.

In response to a commenter's allegations about TCF Bank's level of community development lending and investment, Chemical notes that TCF Bank received an overall "High Satisfactory" CRA rating for the Investment Test in the bank's most recent CRA performance evaluation and cites to examiners' conclusions about TCF Bank's community development lending activities. Chemical represents that TCF Bank has invested in a number of local community partnerships and maintains an active dialogue with community organizations, using input they provide to enhance the bank's

CRA program and products and services targeted to the needs of LMI individuals and geographies.

In response to a commenter's allegations about TCF Bank's fees, Chemical represents that it does not expect any material discontinuations in products or services or material increases in customer fees resulting from the proposed transaction. Chemical notes that TCF Bank resolves customer concerns in ways that meet customers' needs and states that the combined organization would implement an integrated complaint management system. With respect to branching concerns, Chemical asserts that each bank routinely evaluates the CRA and fair lending impacts of their branch networks, and that the combined bank would continue this practice.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA evaluation, as well as other information and supervisory views from the relevant federal financial supervisors, which in this case are the Reserve Bank for Chemical Bank and the OCC for TCF Bank.[31] In addition, the Board considers information provided by the applicant and by public commenters.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[32] 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.

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

[32] 12 U.S.C. § 2906.

In general, federal financial supervisors apply a lending test ("Lending Test"), investment test ("Investment Test"), and service test ("Service Test") to evaluate the performance of large insured depository institutions, such as Chemical Bank and TCF Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under HMDA, in addition to small business, small farm, and community development loan data collected and reported under CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. An institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's AAs; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs 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;[33] (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies. The Investment Test applicable to large institutions evaluates the number and amounts of

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

qualified investments that benefit their AAs, and the Service Test evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[34]

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.[35] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of the institution.

CRA Performance of Chemical Bank

Chemical Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of September 18, 2017 ("Chemical Bank Evaluation").[36] The bank received "High Satisfactory" ratings for the Lending Test and the Investment Test and a "Low Satisfactory" rating for the Service Test.[37]

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[34] 12 CFR 228.21 et seq.

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

[36] The Chemical Bank Evaluation was conducted using Large Bank CRA Examination Procedures. For AAs that were unchanged from the prior evaluation, examiners reviewed home mortgage lending activity under HMDA and small business loans originated from 2015 through 2016. The evaluation period for community development loans, investments, and services was October 27, 2015, through September 18, 2017, for AAs that were unchanged from the prior evaluation. Examiners evaluated new AAs associated with the acquisition of Talmer Bancorp., Inc., for 2016 for CRA and HMDA-reportable data. For the new AAs, the evaluation period for community development activities was January 1, 2016, through September 18, 2017.

[37] The Chemical Bank Evaluation included full-scope evaluations of the South Bend-Mishawaka, Indiana–Michigan Multi-State MSA; the Elkhart–Goshen, Indiana MSA; the

Examiners found that Chemical Bank originated a substantial majority of its loans inside its AAs and that the bank's overall lending activity reflected good responsiveness to the credit needs of its communities. In addition, examiners found the bank's distribution of product lines by income level of the borrower to be adequate and the bank's distribution of loans to businesses with different revenue sizes to be excellent. Examiners noted that the bank had a good record of serving the credit needs of very small businesses and low-income individuals and areas. In addition, examiners noted that the bank uses innovative and flexible lending practices in serving the credit needs of its AAs.

In Michigan, Chemical Bank's performance under the Lending Test was rated "High Satisfactory." In the Detroit MD, an area of concern for a commenter, examiners found excellent loan penetration and adequate penetration among borrowers of different income levels.[38] In addition, examiners noted Chemical Bank's high level of community development loans and good record of serving the credit needs of very small businesses and of low-income individuals and areas in the Detroit MD. Moreover, examiners found that Chemical Bank outperformed peer institutions in making home purchase loans in LMI census tracts in the Detroit MD.

In Ohio, Chemical Bank's performance under the Lending Test was rated "High Satisfactory." In the Cleveland MSA, an area of concern to a commenter, examiners found that the bank's rate of lending exceeded aggregate lenders in penetration of LMI census tracts with respect to home purchase loans in 2016.

Ann Arbor, Michigan MSA; the Battle Creek, Michigan MSA; the Detroit MD; the Flint, Michigan MSA; the Grand Rapids–Wyoming, Michigan MSA; the Midland, Michigan MSA; the South Bend–Mishawaka, Indiana–Michigan MSA; the Warren–Troy–Farmington Hills, Michigan MSA; the North Michigan, Non-MSA; the Cleveland MSA; and the Youngstown–Warren–Boardman Ohio–Pennsylvania MSA. Limited-scope evaluations were conducted in the bank's remaining AAs.

[38] At the time of the Chemical Bank Evaluation, the Detroit MD was a new AA for Chemical Bank, with the bank having entered that market in 2016 with its acquisition of Talmer Bancorp, Inc. See supra note 36.

Examiners found that Chemical Bank made a significant level of qualified community development investments and grants and exhibited excellent responsiveness to credit and community development needs in its AAs. In addition, examiners noted that the bank's recent use of federal tax credits for affordable housing initiatives was innovative.

Examiners found that the bank's retail delivery systems were reasonably accessible to all geographies and individuals of different income levels. Examiners also found that the bank's services did not vary in a way that inconvenienced geographies or individuals, particularly LMI geographies and individuals. In addition, examiners noted that the bank provided a high level of community development services throughout its AAs.

Chemical's Efforts Since the Chemical Bank Evaluation

Chemical states that, since the Chemical Bank Evaluation, Chemical Bank has continued to originate a substantial number of mortgage and consumer loans to LMI borrowers and has made significant community investments. Chemical represents that the bank has originated a significant number of small business and farm loans, including in LMI census tracts across the bank's AAs. Chemical also represents that Chemical Bank has originated a significant number of community development loans.

In the Detroit MD, an area of concern for commenters, Chemical asserts that Chemical Bank has originated a significant number of mortgage loans to LMI individuals and families and within LMI neighborhoods since the Chemical Bank Evaluation. Chemical represents that it has originated small business loans to small businesses and within LMI communities in the Detroit MD. In addition, Chemical states that Chemical Bank joined a home mortgage program dedicated to helping homebuyers purchase and rehabilitate homes in the City of Detroit.

In the Cleveland MSA, Chemical contends that Chemical Bank has originated a significant amount and number of small business loans to small businesses and within LMI communities since the Chemical Bank Evaluation. In addition, Chemical represents that Chemical Bank has made additional mortgage loans to LMI individuals and invested in and lent to various community development initiatives in the Cleveland MSA.

CRA Performance of TCF Bank

TCF Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the OCC, as of December 31, 2016 ("TCF Bank Evaluation").[39] The bank received an "Outstanding" rating for the Lending Test and "High Satisfactory" ratings for the Investment Test and Service Test.[40]

Examiners found that the bank's overall lending activity was good and that the bank's community development lending activities reflected good responsiveness to the credit needs of the bank's AAs. Examiners noted that the bank's loan program reflected excellent geographic and borrower income distribution and found that the bank made use of innovative and flexible lending initiatives, including hardship modifications,

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[39] The TCF Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed data for the Lending Test from January 1, 2012, through December 31, 2016 (except the Champaign–Urbana MSA, where examiners reviewed data from January 1, 2012, through December 31, 2015). For the Investment and Service Tests and community development loans, examiners reviewed data from January 1, 2012, through August 6, 2017 (except the Champaign–Urbana MSA, where examiners reviewed data from January 1, 2012, through December 31, 2015). For the Chicago–Naperville–Elgin Illinois–Indiana–Wisconsin Multistate Metropolitan Area ("Chicago AA") and Minneapolis–St. Paul–Bloomington, Minnesota MSA ("Minneapolis AA"), examiners conducted separate analyses of 2015 and 2016 data due to changes resulting from the 2014 Office of Management and Budget geographic boundary revisions.

As part of the TCF Bank Evaluation, examiners cited evidence of two violations of the Servicemember Civil Relief Act ("SCRA") but indicated that TCF Bank had appropriately remedied the situation and improved its SCRA policies, procedures, and controls. Accordingly, examiners did not lower the CRA performance of TCF Bank as a result of this finding.

[40] The TCF Bank Evaluation included full-scope evaluations of the Chicago AA; the Minneapolis AA; the St. Cloud, Minnesota MSA; the Detroit MSA; the Colorado Springs, Colorado MSA; the Denver–Aurora–Lakewood, Colorado MSA; the Milwaukee–Waukesha–West Allis, Wisconsin MSA ("Milwaukee AA"); the Phoenix–Mesa–Scottsdale, Arizona MSA; the Sioux Falls, South Dakota MSA; and the Champaign–Urbana, Illinois MSA. Limited-scope evaluations were performed in the bank's remaining AAs.

in serving credit needs. Examiners also found that, overall, the bank's community development lending had a positive impact on the bank's performance on the Lending Test, and that these activities were responsive to the credit needs of the bank's AAs.

In Wisconsin, TCF Bank's overall lending performance was rated "Outstanding," and its overall lending performance in the Milwaukee AA, an area of concern for a commenter, was found to be excellent, with excellent geographic and borrower income distributions for home mortgage loans. However, examiners found that the bank's volume of loans to small businesses was poor compared to peer institutions.

Examiners found that TCF Bank had an overall good level of qualified investments and that the investments were responsive to community needs. In addition, examiners found that the bank's branches were accessible to essentially all portions of the bank's AAs and that there were no significant differences between branch hours, which overall were found to be good. Examiners noted that TCF Bank provided adequate levels of community development services and that the bank offered a variety of services targeted to unbanked and underbanked customers throughout its AAs.

TCF's Efforts Since the TCF Bank Evaluation

Chemical states that, since the TCF Bank Evaluation, TCF Bank has augmented its community development initiatives by centralizing community development activities and appointing new management. The bank has established and met enhanced community development lending goals and increased philanthropic grants and investments throughout its AAs. Chemical also represents that TCF Bank has continued to participate in and operate various financial literacy initiatives and has increased its small business lending efforts, including in areas of interest to the commenters.

Additional Supervisory Views

In its review of the proposal, the Board reviewed the consumer compliance and fair lending records of Chemical Bank and consulted with the OCC regarding the CRA, consumer compliance, and fair lending records of TCF Bank. The OCC reviewed and approved the Bank Merger Act application related to the proposal and, in doing so, considered timely adverse comments that were submitted to the Board on the BHC Act application. The Board has considered the results of the most recent consumer compliance examinations of Chemical Bank and TCF Bank, which included a review of the banks' compliance management programs and compliance with consumer protection laws and regulations, and considered Chemical Bank's supervisory record with the CFPB.

The Board has taken the foregoing consultations and examinations into account in evaluating the proposal, including in considering whether Chemical has the experience and resources to ensure that TCF Bank would help meet the credit needs of the communities to be served following consummation of the proposed transaction.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Chemical represents that, following the proposed transaction, the combined bank would retain the full range of products and services currently offered by Chemical Bank and TCF Bank. Chemical notes that customers of TCF Bank would gain access to enhanced products and services, including, among others, Chemical Bank's tax credit lending services and small business and agricultural lending programs. In addition, Chemical represents that customers of Chemical Bank would benefit by receiving access to, among other products and services, TCF Bank's nationwide home equity lines of credit and commercial finance lending, retail banking, and credit card agency services. Chemical represents that customers of both banks would benefit from a larger branch and ATM network and greater capital resources.

Chemical represents that the combined bank would continue to utilize the current products, programs, and procedures of TCF Bank, in addition to those adopted from Chemical Bank, to meet the bank's obligations under the CRA. Chemical further represents that it would work with existing partners of Chemical Bank and TCF Bank, including community groups, to achieve the combined bank's CRA and fair lending goals.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions; the institutions' records of compliance with fair lending and other consumer protection laws; supervisory views of the Reserve Bank, OCC, and CFPB; confidential supervisory information; information provided by Chemical; 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 determines that the convenience and needs factor is consistent with approval.

<u>Financial Stability</u>

Section 3 of the BHC Act requires the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."[41]

To assess the likely effect of a proposed transaction on the stability of the United States 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.[42] 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

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[41] 12 U.S.C. § 1842(c)(7).

[42] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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.[43]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in total 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.[44]

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a pro forma organization of less than $100 billion in total assets. Both the acquirer and the target are predominately engaged in retail and commercial banking activities.[45] The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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

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

[45] Chemical and TCF both offer a range of retail and commercial banking products and services. Chemical has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved.[46] 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 Chemical with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on any 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

[46] A commenter requested that the Board hold a public hearing on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any proposal unless the appropriate supervisory authorities for the acquiring bank or the bank to be acquired make a timely written recommendation of disapproval of the proposal. 12 U.S.C. § 1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities in connection with this application. Under its rules, the Board also, in its discretion, may 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 commenter's request in light of all of the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why written comments do not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

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

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

By order of the Board of Governors,[47] effective July 16, 2019.

Margaret McCloskey Shanks (signed)

Margaret McCloskey Shanks
Deputy Secretary of the Board

[47] Voting for this action: Chair Powell, Vice Chair Clarida, Vice Chair for Supervision Quarles, and Governors Brainard and Bowman.