FRB Order No. 2021-12
December 17, 2021

FEDERAL RESERVE SYSTEM

First Citizens BancShares, Inc.
Raleigh, North Carolina

Order Approving the Acquisition of a Bank Holding Company

First Citizens BancShares, Inc. ("BancShares"), Raleigh, North Carolina, 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 indirectly acquire CIT Group, Inc. ("CIT"), New York, New York, and thereby indirectly acquire CIT Bank, National Association ("CIT Bank"), Pasadena, California. BancShares also has filed a notice under sections 4(c)(8) and (j) of the BHC Act[3] to indirectly acquire CIT's and CIT Bank's ownership interests in certain nonbanking companies engaged in extending credit and servicing loans. In addition, BancShares' state nonmember bank subsidiary, First-Citizens Bank & Trust Company ("FCB"),[4] Raleigh, North Carolina, has requested approval under the Board's Regulation K to establish FC International, Inc. ("FC International"), Raleigh, North Carolina, as a

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[1] 12 U.S.C. § 1841 et seq.

[2] 12 U.S.C. § 1842.

[3] 12 U.S.C. §§ 1843(c)(8) and (j).

[4] In connection with BancShares' acquisition of CIT, CIT and CIT Bank would each merge with and into FCB, with FCB as the surviving entity. The mergers of CIT and CIT Bank into FCB are subject to approval by the Federal Deposit Insurance Corporation ("FDIC"), pursuant to section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act"). 12 U.S.C. § 1828(c). The FDIC approved the Bank Merger Act application on July 13, 2021. FCB would become a bank holding company for a moment in time under the proposal; however, no regulatory purpose would be served by requiring FCB to file an application under section 3 of the BHC Act in connection with that aspect of the transaction.

corporation organized under section 25A of the Federal Reserve Act ("Edge corporation") and for FC International to make an initial investment.[5]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published.[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 sections 3 and 4 of the BHC Act and the Board's Regulation K.

BancShares, which is part of the Holding, Frank B. and Lewis R.Family Chain ("Holding F&L Family Chain"),[7] has consolidated assets of approximately $56.9 billion, and is the 51st largest insured depository organization in the United States, controlling approximately $50.1 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[8] BancShares controls FCB, which operates in Arizona, California, Colorado, Florida, Georgia, Kansas, Maryland, Missouri, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin.

CIT, with consolidated assets of approximately $54.4 billion, is the 53rd largest insured depository organization in the United States, controlling approximately

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[5] 12 U.S.C. § 611 et seq.; 12 CFR 211.5(b); 12 CFR 211.9(a)(5). The section 3 application, section 4 notice, and Regulation K requests are collectively referred to as the "proposal."

[6] 85 Federal Register 80788 (December 14, 2020) (section 3 application); 86 Federal Register 7292 (January 27, 2021) (extension of comment period for section 3 application); 86 Federal Register 7382 (January 28, 2021) (section 4 notice); 85 Federal Register 86566 (December 30, 2020) (Edge corporation establishment). See also 12 CFR 262.3(b).

[7] In addition to BancShares, the Holding F&L Family Chain controls two other bank holding companies, Southern BancShares (N.C.), Inc., Mount Olive, and Fidelity BancShares (N.C.), Inc., Fuquay-Varina, both of North Carolina, and their respective subsidiary banks.

[8] Consolidated asset and national deposit, ranking, and market share data are as of September 30, 2021.

$40.2 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. CIT Bank operates in Arizona, California, Colorado, Florida, Hawaii, Kansas, Nebraska, Nevada, and Texas.

On consummation of the proposal, BancShares would become the 38th largest insured depository organization in the United States, with consolidated assets of approximately $111.3 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. BancShares would control consolidated deposits of approximately $90.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[9]

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 would be prohibited under state law.[10] Section 3(d) also provides that the Board (1) 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 target bank has not been in existence for the lesser of the state statutory minimum period of time or five years;[11] (2) must take into account the record of the applicant under the Community Reinvestment Act of 1977 ("CRA")[12] and the applicant's record of compliance with applicable state community reinvestment laws;[13] and (3) may not approve an application pursuant to section 3(d) if the bank

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[9] See Appendix I for deposit data by state, for states in which FCB and CIT both have banking operations.

[10] 12 U.S.C. § 1842(d)(1)(A).

[11] 12 U.S.C. § 1842(d)(1)(B).

[12] 12 U.S.C. § 2901 et seq.

[13] 12 U.S.C. § 1842(d)(3).

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, 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 bank have overlapping banking operations.[14]

For purposes of the BHC Act, the home state of BancShares is North Carolina.[15] CIT Bank is located in Arizona, California, Colorado, Florida, Hawaii, Kansas, Nebraska, Nevada, and Texas. BancShares is well capitalized and well managed under applicable law, and FCB has a "Satisfactory" rating under the CRA. There are no state community reinvestment laws or state minimum-age requirements that apply to the proposal. CIT Bank has been in existence for more than five years.

On consummation of the proposed transaction, BancShares would control less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Arizona, Colorado, Florida, Kansas, Nebraska, and Texas each impose a limit on the total amount of in-state deposits that a single banking organization may control.[16] The combined organization would control approximately 0.3 percent of the

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[14] 12 U.S.C. § 1842(d)(2)(A)-(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 to be located in any state in which the bank is chartered, headquartered, or operates a branch. See 12 U.S.C. § 1841(o)(4)-(7).

[15] 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 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.

[16] See Ariz. Rev. Stat. § 6-328(A) (30 percent); Colo. Rev. Stat. § 11-104-202(4) (25 percent); Fla. Stat. § 658.2953(5)(b) (30 percent); Kan. Stat. Ann. § 9-520(a) (15 percent); Neb. Rev. Stat. § 8-2106 (22 percent); and Tex. Fin. Code § 203.004(a)

total amount of deposits of insured depository institutions in Arizona, 2.7 percent in California, 0.1 percent in Colorado, 0.3 percent in Florida, 0.1 percent in Kansas, 0.3 percent in Nebraska, and 0.03 percent in Texas. The Board has considered all other requirements under section 3(d) of the BHC Act. Accordingly, considering all the facts of record, the Board is not precluded under 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.[17] 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 communities to be served.[18] In addition, under section 4 of the BHC Act, the Board must consider the competitive effects of a proposal to acquire a nonbank company under the balancing test of section 4(j) of the BHC Act.[19]

BancShares and CIT have subsidiary banks that compete directly in eight banking markets in the states of Arizona (Phoenix and Tucson), California (Los Angeles and San Diego), Colorado (Denver-Boulder), Florida (Naples Area), Missouri (Kansas City), and Texas (Dallas). The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the relative

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(20 percent). California, Hawaii, and Nevada do not impose limits on the total amount of deposits an insured depository institution may control in those jurisdictions.

[17] 12 U.S.C. § 1842(c)(1)(A).

[18] 12 U.S.C. § 1842(c)(1)(B).

[19] 12 U.S.C. § 1843(j)(2)(A). The Board also considers the effects of the proposal on competition when acting on a proposal under Regulation K to organize an Edge corporation. See 12 CFR 211.5(b)(4)(iv). As discussed in the section on Establishment of Edge Corporation, infra, the proposed establishment of an Edge corporation does not appear to have any negative effects on competition.

share of total deposits in insured depository institutions in the markets ("market deposits") that BancShares would control;[20] 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");[21] the number of competitors that would remain in the markets; and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in all eight of the banking markets. On consummation, two banking markets would remain highly concentrated; three banking markets would remain moderately concentrated; and three banking markets

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[20] Deposit and market share data are as of June 30, 2021, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. Data are not yet available for 2021. 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).

[21] In applying the DOJ Bank Merger Guidelines issued in 1995 (see https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995), the Board looks to the DOJ's Horizontal Merger Guidelines, issued in 1992 and amended in 1997, for the characterization of a market's concentration. See https://www.justice.gov/atr/horizontal-merger-guidelines-0. Under these Horizontal Merger Guidelines, which were in effect prior to 2010, 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 DOJ has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (see https://www.justice.gov/atr/horizontal-merger-guidelines-08192010), 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.

would remain unconcentrated, as measured by the HHI. The change in the HHI in these markets generally would be de minimis, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in each of these banking markets.[22]

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 eight banking markets 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 proposals under sections 3 and 4 of the BHC Act, the Board considers the financial and managerial resources and future prospects of the institutions involved, as well as the effectiveness of the institutions in combatting money laundering.[23] 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 public and supervisory information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as the impact of the proposed funding of the transaction and any

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[22] These banking markets and the competitive effects of the proposal in these markets are described in Appendix II.

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

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 effectively 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.

BancShares, CIT, 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 acquisition that is structured primarily as a share exchange, with a subsequent merger of the bank holding company and subsidiary depository institution into FCB.[24] The capital, asset quality, earnings, and liquidity of BancShares are consistent with approval, and BancShares appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects of the resulting institution 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 BancShares, CIT, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by BancShares;

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

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 public comments on the proposal.[25]

The combined organization would be considered well managed. BancShares' and CIT's directors and senior executive officers have knowledge of and experience in the banking and financial service sectors, and BancShares' risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered BancShares' plans for implementing the proposal, including additional information provided by BancShares. BancShares and CIT 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

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[25] The Board received three comment letters on the proposal, two of which were identical in content. All three comment letters claimed that FCB does not possess the managerial resources necessary to effectively integrate the two banking organizations, particularly considering the increased regulatory requirements on the combined organization and the acquisition of new lines of business, combined with the departure of CIT management and employees who currently oversee and perform those activities. In addition, the two identical comment letters alleged that BancShares has exerted significant operational and decision-making influence over certain of CIT's day-to-day operations. One of the three comment letters also disputed the viability of certain business lines. The Board considered these allegations and comments in its evaluation of the proposal.

One comment letter also objected to executive compensation and lack of board diversity. While the Board encourages all firms to promote diversity in their management and workforce, the statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act are limited and specifically defined. See, e.g., Sandy Spring Bancorp, Inc., FRB Order No. 2017–32 at 10 n.26 (November 22, 2017). See also Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973). Other provisions of law authorize the Board, together with the other federal financial supervisory agencies, to monitor the efforts of regulated entities to promote diversity and inclusion. Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies, 80 Federal Register 33016 (June 10, 2015); 12 U.S.C. § 5452.

proposal. BancShares has indicated that it would implement a combination of its and CIT's risk-management policies, procedures, and controls at the combined organization. BancShares also detailed its efforts to develop and implement enhancements to its enterprise-wide risk management program to ensure compliance with Category IV standards.[26] In addition, management of BancShares and CIT have the experience and resources to operate the combined organization in a safe and sound manner, and BancShares plans to integrate CIT's existing management and personnel in a manner that augments BancShares' management.[27]

Based on all of the facts of record, including BancShares' 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 BancShares and CIT 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.[28] 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

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[26] Following consummation of the proposal, based on average total consolidated assets, the combined organization likely would become subject to Category IV standards. See generally 12 CFR Part 252.

[27] Following consummation of the proposal, the board of directors of the resulting holding company would be composed of 14 directors, with 11 directors designated by BancShares and 3 by CIT.

[28] 12 U.S.C. § 1842(c)(2). As discussed in the section on Establishment of Edge Corporation, infra, the convenience and needs of the community to be served with respect to international banking and financial services are also consistent with approval of FCB's proposed establishment of the Edge corporation.

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,[29] 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.[30]

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 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 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 FCB and CIT Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC with respect to FCB, the Office of the Comptroller of the Currency ("OCC") with respect to CIT Bank, and the Consumer Financial Protection Bureau ("CFPB") with respect to both banks; confidential supervisory information; and information provided by FCB.

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

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[29] 12 U.S.C. § 2901(b).

[30] 12 U.S.C. § 2903.

information and supervisory views from the relevant federal financial supervisors.[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.

In general, federal financial supervisors apply a lending test ("Lending Test"), an investment test ("Investment Test"), and a service test ("Service Test") to evaluate the performance of large banks, such as FCB and CIT Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an institution's lending-related activities 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"), 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 evaluated 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 CRA assessment areas ("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

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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.

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.[34] The Investment Test evaluates the number and amounts of qualified investments that benefit the institution's AAs, and the Service Test evaluates the availability and effectiveness of the institution's systems for delivering retail banking services and the extent and innovativeness of the institution's community development services.[35]

CRA Performance of FCB

FCB was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of March 26, 2019 ("FCB Evaluation").[36] The bank received "High Satisfactory" ratings for the Lending Test, the Investment Test, and the Service Test.

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[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).

[34] See 12 CFR 228.22(b).

[35] 12 CFR 228.21 et seq.

[36] The FCB Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed home mortgage lending activity under HMDA and small business and small farm loans originated from 2016 through 2017. Examiners reviewed community development loans, community development investments, community development services, and delivery systems for the bank's products and services from June 6, 2016, through March 26, 2019 (except for community development activities, which were only evaluated through December 31, 2018). The FCB Evaluation focused on FCB's operations in 77 AAs, 4 multistate metropolitan statistical area ("MSA") AAs, 4 non-MSA AAs, and 17 states.

With respect to the Lending Test, examiners found that FCB originated a substantial majority of its loans inside its AAs and that the bank's overall lending levels reflected good responsiveness to the credit needs of the bank's AAs.[37] Examiners noted that the geographic distribution of FCB's loans reflected good penetration throughout FCB's AAs and among borrowers of different incomes, as well as businesses and farms of different sizes. In addition, examiners found that FCB used flexible lending practices to serve the credit needs of its AAs and had increased its originations of community development loans since the prior evaluation.

With respect to the Investment Test, examiners found that FCB made a significant level of qualified community development investments and donations, particularly those that are not routinely provided by private investors. Examiners also noted FCB's good responsiveness to the credit and community development needs of the bank's AAs. In addition, examiners noted that FCB occasionally used innovative and complex investments to support community development initiatives.

With respect to the Service Test, examiners found that FCB's delivery systems were accessible to essentially all geographies and individuals of different income levels. Examiners also found that FCB's services and business hours did not vary in a way that inconvenienced geographies or individuals, including LMI geographies and individuals.[38] In addition, examiners noted that the bank provided a relatively high level of community development services within most of its AAs.

FCB's Efforts Since the FCB CRA Evaluation

BancShares represents that FCB has continued to build on its CRA performance by strengthening its commitment to serve the needs of LMI geographies,

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[37] The number and dollar volume of loans originated within the AAs as a percent of total loans originated by FCB Bank were 93.6 and 92.3 percent, respectively.

[38] Examiners also found that FCB's opening and closing of branches throughout the bank's AAs did not adversely affect the accessibility of the bank's delivery systems. During the evaluation period, FCB opened and/or acquired 60 branches and closed 62 branches, primarily in connection with mergers and acquisitions.

individuals, and businesses in all of its communities. BancShares notes that FCB has committed significant funding to community development investments and that FCB's staff have performed extensive financial outreach and volunteer engagements. In addition, BancShares notes that, in early 2021, FCB announced a $16 billion community benefits plan developed in collaboration with representatives of community reinvestment organizations. Under this five-year plan, FCB has committed $6.9 billion for community development lending and investments, $5.9 billion for lending to small businesses, and $3.2 billion for home purchase mortgage loans following completion of the proposed merger of BancShares and CIT.[39]

CRA Performance of CIT Bank

CIT Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of August 6, 2018 ("CIT Bank Evaluation").[40] The bank received a "Low Satisfactory" rating for the Lending Test and the Service Test and an "Outstanding" rating for the Investment Test.[41]

With respect to the Lending Test, examiners found that CIT Bank originated an adequate amount of loans inside its AAs and that the bank's overall lending

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[39] 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 organization. See, e.g., CIT Group, Inc., FRB Order No. 2015–20 at 24 n.54 (July 19, 2015); Citigroup Inc., 88 Federal Reserve Bulletin 485 (2002); Fifth Third Bancorp, 80 Federal Reserve Bulletin 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to help serve the credit needs of its CRA AAs.

[40] The CIT Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed home mortgage lending activity under HMDA and small business loans originated from July 1, 2015, through December 31, 2017. Examiners reviewed community development loans, community development investments, community development services, and delivery systems for the bank's products and services from August 3, 2015, through December 31, 2017.

[41] The CIT Bank Evaluation included full-scope evaluations of the Los Angeles-Long Beach, California, Combined Statistical Area ("CSA") and the San Diego-Carlsbad,

levels reflected adequate and good responsiveness, respectively, to the credit needs of the Los Angeles-Long Beach CSA and the San Diego-Carlsbad MSA. Examiners found that the overall geographic distribution of CIT Bank's loans was good, with excellent geographic distribution of small business lending and good distribution of home mortgage lending in LMI geographies.

Examiners found that CIT Bank's loan program reflected adequate distribution of loans among borrowers of different income levels. Examiners also found that CIT Bank used flexible lending practices in its small loans to businesses. Examiners noted that CIT Bank's community development lending had a neutral impact on the bank's overall rating for the Lending Test.

With respect to the Investment Test, examiners found that CIT Bank's level of qualified investments reflected excellent responsiveness to community development needs in the bank's AAs.[42] Examiners noted that CIT Bank was one of the first banks in Los Angeles to provide a grant to expand homeownership down-payment assistance and education programs for LMI homeowners in the area.

With respect to the Service Test, examiners found that CIT Bank's delivery systems were reasonably accessible to essentially all geographies in the bank's AAs. However, with respect to the Los Angeles-Long Beach CSA, examiners noted that CIT Bank did not have any branches in low-income geographies and that the bank's distribution of branches in moderate-income geographies was well below the percentage of the population living within those geographies.[43] With respect to the San Diego-Carlsbad MSA, examiners noted that CIT Bank did not have any branches in middle-

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California, MSA AAs. The CIT Bank Evaluation did not include any limited-scope evaluations.

[42] CIT Bank's qualified investments totaled 7.75 percent of the bank's tier 1 capital.

[43] Examiners noted that, when considering customer data located in middle- and upper-income branches adjacent to moderate-income geographies within the Los Angeles-Long Beach CSA, the distribution of customer income was closer to the percentage of population living in moderate-income geographies.

income geographies; however, examiners also noted that CIT Bank's distribution of branches in low-income geographies in the MSA exceeded the percentage of the population living within those geographies. In both AAs, examiners found that CIT Bank maintained standard business hours and offered traditional banking products and services at all of its branch locations. In addition, examiners noted that CIT Bank provided an adequate level of community development services within its AAs.

On February 14, 2017, a complaint was filed with the U.S. Department of Housing and Urban Development ("HUD"), alleging that CIT and CIT Bank, as the successor to OneWest Bank, had engaged in discriminatory residential housing lending practices from 2011 until 2017, in violation of the Fair Housing Act ("FHA"). On July 26, 2019, HUD approved a conciliation agreement ("HUD Conciliation Agreement") between CIT and the complainant that resolved the allegations. Although CIT denied violating the FHA or engaging in any discrimination on a prohibited basis, it committed as part of the HUD Conciliation Agreement to expand CIT Bank's efforts and opportunities to serve the banking and credit needs of majority-minority and LMI neighborhoods in the bank's AAs.[44] The CRA performance rating assigned to CIT Bank was not lowered as a result of this complaint or the HUD Conciliation Agreement. BancShares has confirmed that BancShares and FCB will be the successors to CIT for purposes of the HUD Conciliation Agreement and will be bound by CIT's obligations under the agreement.

CIT Bank's Efforts Since the CIT Bank Evaluation

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[44] These commitments include investing $5 million in a loan subsidy fund to increase credit opportunities for residents of majority-minority neighborhoods; devoting $1.3 million toward advertising and community outreach; and providing $1 million in grants for homebuyer education, credit counseling, community revitalization, and homeless programs. CIT Bank also committed to originate $100 million in home purchase, home improvement, and home refinance loans to borrowers in majority-minority areas and to open a full-service branch to serve the banking and credit needs of residents in a majority-minority and LMI neighborhood.

BancShares contends that CIT Bank has continued to build on its CRA performance. BancShares represents that CIT Bank has fulfilled the majority of the commitments under the HUD Conciliation Agreement. In addition, BancShares notes that CIT Bank established a four-year community benefits plan in collaboration with representatives of community groups, in advance of the bank's 2020 acquisition of Mutual of Omaha Bank. BancShares represents that, under this community benefits plan, CIT Bank committed to make small business, affordable housing, and community development investments in LMI diverse neighborhoods. BancShares notes that CIT Bank has made progress toward fulfilling the financial and nonfinancial commitments made as part of the plan. BancShares represents that CIT Bank also has committed to fund additional community development investments and, since January 2018, has made significant local grants and contributions and funded sponsorships.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the FDIC regarding the CRA, consumer compliance, and fair lending records of FCB and consulted with the OCC regarding the CRA, consumer compliance, and fair lending records of CIT Bank. The Board considered the results of the most recent consumer compliance examinations of FCB and CIT Bank, which included a review of the banks' compliance management programs and compliance with consumer protection laws and regulations. The Board also considered FCB's and CIT Bank's supervisory records with the CFPB.

The Board has taken the foregoing consultations and examinations into account in evaluating the proposal, including in considering whether BancShares has the experience and resources to ensure that FCB and CIT 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. BancShares represents that, following the proposed transaction, the combined bank would retain the full range of products and services currently offered by FCB and CIT Bank. BancShares notes that customers of CIT Bank would gain access to enhanced products and services, including expanded treasury, merchant, and international banking services. BancShares also notes that customers of FCB would benefit by receiving access to, among other products and services, CIT Bank's commercial equipment lending and leasing offerings, factoring services, expanded asset-based-lending offerings, and capital markets expertise. BancShares represents that customers of both banks would benefit from a more extensive branch and ATM network and the combined bank's greater capital resources.

BancShares represents that the combined bank would utilize the current products, programs, and procedures of FCB, in addition to those adopted from CIT Bank, to meet the combined bank's obligations under the CRA. BancShares further represents that it would work with existing partners of FCB and CIT 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 records of the relevant depository institutions under the CRA; the institutions' records of compliance with fair lending and other consumer protection laws; confidential supervisory information; information provided by BancShares; 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 considerations are consistent with approval.

Financial Stability Considerations

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."[45] In addition, section 4 of the BHC Act requires the Board to balance the expected public

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[45] 12 U.S.C. § 1842(c)(7).

benefits of the proposal with the "risk to the stability of the United States banking or financial system."[46]

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

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The Board reviewed publicly available data, data compiled through the supervisory process, and data obtained through information requests to the institutions involved in the proposal, as well as qualitative information.

The pro forma organization scores low on nearly all systemic importance indicators. The proposed acquisition would increase BancShares' size by approximately

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[46] 12 U.S.C. § 1843(j)(2)(A).

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

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

125, 106, and 132 percent as measured by total assets, deposits, or total exposures, respectively, but the combined organization would still hold well below 1 percent of total U.S. financial system assets. The combined organization would not be a critical services provider or so interconnected with other firms or markets that it would pose significant risk to the financial system in the event of financial distress. In addition, the combined organization would have limited cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm.

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.

Acquisition of Nonbanking Companies

BancShares also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire voting shares in nonbank companies held by CIT and CIT Bank and thereby engage in extending credit and servicing loans.[49] The Board previously has determined by regulation that the proposed activities are closely related to banking for purposes of section 4(c)(8) of the BHC Act.[50] BancShares has stated that it would conduct these activities in accordance with the Board's regulations governing these activities for bank holding companies.

Section 4(j)(2)(A) of the BHC Act requires the Board to "consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater

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[49] The nonbank companies are CIT Strategic Credit Partner Holdings, LLC, and CIT Northbridge Credit, LLC, both of New York, New York. BancShares represents that it would rely on its authority as a financial holding company to acquire the outstanding equity interests of other nonbank companies currently held by CIT Group. See 12 U.S.C. § 1843(k)(6).

[50] See 12 CFR 225.28(b)(1).

convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."[51]

Under the proposal, BancShares would acquire a noncontrolling interest in each nonbank company and thereby engage in extending credit and servicing loans. There are public benefits to be derived from permitting bank holding companies to make potentially profitable investments in financial companies and to allocate their resources in the manner they consider to be most efficient when such investments and actions are consistent, as in this case, with the relevant considerations under the BHC Act.[52]

The Board concludes that the performance of the proposed nonbanking activities, as assessed under Regulation Y, Board precedent, and this order, is not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, unsound banking practices, or risk to the stability of the U.S. banking or financial system. Based on the entire record, and for the reasons discussed above, the Board concludes that the balance of benefits and potential adverse effects related to competition, financial and managerial resources, convenience to the public, financial stability, and other factors weigh in favor of approval of the proposal. Accordingly, the Board determines that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

Establishment of Edge Corporation

Separately, FCB has requested approval under sections 211.5(b) and 211.9(a)(5) of the Board's Regulation K to establish an Edge corporation, FC International, and for FC International to make an initial investment in certain foreign

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[51] 12 U.S.C. § 1843(j)(2)(A).

[52] See, e.g., The Toronto-Dominion Bank, FRB Order No. 2020-04 (September 30, 2020); Morgan Stanley, 94 Federal Reserve Bulletin C103 (2008); Arvest Bank Group, 89 Federal Reserve Bulletin 439 (2003); The Charles Schwab Corporation, 86 Federal Reserve Bulletin 494 (2008).

entities owned by CIT.[53] CIT currently holds interests in several foreign entities that engage in equipment leasing, equipment financing, and incidental activities. After consummation of the proposed merger, FC International, through the foreign entities, would engage in these activities.[54]

The factors considered by the Board in acting on a proposal to organize an Edge corporation include (i) the financial condition and history of the applicant, (ii) the general character of its management, (iii) the convenience and needs of the community to be served with respect to international banking and financial services, and (iv) the effects of the proposal on competition.[55] The Board has considered these factors and concludes that each of these factors is consistent with approval of FCB's proposed establishment of FC International. In addition, the Board finds that FC International's proposed initial investment is 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. In reaching its conclusion, the

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[53] CIT holds interests in Barbados (Worrell Capital Limited and CIT Holdings (Barbados) SRL); Brazil (The Capita Corporation do Brasil Ltda); Canada (555566 Alberta Ltd., CIT Financial (Alberta) ULC, Services Financiers CIT (Alberta) ULC, CIT Financial Ltd./Services Financiers CIT Ltee., CIP VIII Trust, CIT Canadian VFN Funding Trust, CIP VII Trust, CIT Canadian Funding Trust, Capita Canadian Trust, CIT Financial (Canada) ULC, CIT Mezzanine Partners of Canada Limited); China (CIT Finance & Leasing Corporation); Mexico (MEX CIT SERVICIOS, S. de R.L. de C.V.); the Netherlands (CIT Holdings B.V.); and the United Kingdom (CIT Group Holdings (UK) Limited and CIT Group (UK) Limited) (together, the "foreign entities"). The foreign entities would be held by FC International through an intermediate holding company, C.I.T. Leasing Corporation, Delaware, United States, which initially would not directly engage in any activities except for serving as an intermediate holding company of the foreign entities.

[54] Under the proposal, FC International would operate as a direct subsidiary of FCB. FCB's proposed investments in FC International and the foreign entities are also subject to applicable requirements under North Carolina state law, the Federal Deposit Insurance Act, and FDIC regulations at 12 CFR part 347.

[55] 12 CFR 211.5(b)(4).

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 and regulations. The Board's approval is specifically conditioned on compliance by BancShares with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on 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.

The bank holding company acquisition 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 Richmond, acting under delegated authority.

By order of the Board of Governors,[56] effective December 17, 2021.

(Signed) Ann E. Misback

Ann E. Misback
Secretary of the Board

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

Appendix I

Deposit Data in States where FCB and CIT Bank Both Operate[57]									
	FCB			CIT Bank			Combined Organization		
State / District	Rank of Insured Depository Institution by Deposits	Deposits Controlled (in billions)	Percent of Total Deposits	Rank of Insured Depository Institution by Deposits	Deposits Controlled (in billions)	Percent of Total Deposits	Rank of Insured Depository Institution by Deposits	Deposits Controlled (in billions)	Percent of Total Deposits
Arizona	32nd	0.3	0.2	36th	0.3	0.2	22nd	0.7	0.3
California	52nd	2.5	0.1	12th	41.1	2.0	12th	43.7	2.1
Colorado	56th	0.3	0.1	126th	<0.1	<0.1	56th	0.3	0.1
Florida	37th	2.3	0.3	151st	0.1	<0.1	36th	2.4	0.3
Kansas	174th	0.1	0.1	268th	<0.1	<0.1	174th	0.1	0.1
Texas	185th	0.4	<0.1	444th	<0.1	<0.1	172nd	0.5	<0.1

[57] State deposit, ranking, and market share data are as of June 30, 2021.

Appendix II

BancShares/CIT Banking Markets
Consistent with Board Precedent and DOJ Bank Merger Guidelines

Data are as of June 30, 2021. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted in each market includes thrift institutions.

Phoenix, AZ – Phoenix metropolitan area in Northwestern Pinal County and Maricopa County

	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
BancShares Pre-Consummation	29	$319.1M	0.2	1615	0	60
CIT	35	$211.4M	0.1			
BancShares Post-Consummation	21	$530.5M	0.4			

Tucson, AZ – Tucson metropolitan area in Pima County

	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
BancShares Pre-Consummation	18	$24.6M	0.1	1801	0	18
CIT	16	$96.6M	0.5			
BancShares Post-Consummation	14	$121.2M	0.6			

Los Angeles, CA – Los Angeles metropolitan area in Los Angeles and Orange Counties, the western portions of San Bernardino and Ventura Counties, and the southernmost edge of Kern County

	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
BancShares Pre-Consummation	46	$839.6M	0.1	905	1	116
CIT	6	$39.7B	5.1			
BancShares Post-Consummation	6	$40.5B	5.1			

San Diego, CA – San Diego metropolitan area in San Diego County

	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
BancShares Pre-Consummation	21	$666.8M	0.5			
CIT	23	$538.6M	0.4	1167	1	47
BancShares Post-Consummation	15	$1.2B	0.9			

Denver-Boulder, CO – Denver, CO Ranally Metro Area (“RMA”); Boulder County, CO; the non-RMA portions of Adams and Arapahoe Counties, CO; and the towns of Frederick and Keenesburg in Weld County, CO

	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
BancShares Pre-Consummation	32	$268.2M	0.2			
CIT	66	<$0.1M	<0.1	1232	0	74
BancShares Post-Consummation	32	$268.2M	0.2			

Naples Area, FL – Collier County, FL (minus the town of Immokalee)

	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
BancShares Pre-Consummation	21	$108.0M	0.5			
CIT	22	$105.4M	0.5	873	0	29
BancShares Post-Consummation	17	$213.4M	1.0			

Kansas City, MO – Cass, Clay, Jackson, Lafayette, Platte, and Ray Counties, MO; the towns of Trimble and Holt in Clinton County, MO; the towns of Chilhowee, Holden, and Kingsville in Johnson County, MO; the towns of Adrian, Amsterdam, and Butler in Bates County, MO; Franklin, Johnson, Leavenworth, Linn, Miami, and Wyandotte Counties, KS

	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
BancShares Pre-Consummation	53	$146.1M	0.2			
CIT	110	<$0.1M	<0.1	1021	0	114
BancShares Post-Consummation	53	$146.1M	0.2			

Dallas, TX – Dallas and Rockwall Counties, TX; the southeastern quadrant of Denton County, TX, including Denton and Lewisville; the southwestern quadrant of Collin County, TX, including McKinney and Plano; the communities of Forney and Terrell in Kaufman County, TX; and Midlothian, Waxahachie, and Ferris in Ellis County, TX						
	Rank	**Amount of Deposits**	**Market Deposit Shares (%)**	**Resulting HHI**	**Change in HHI**	**Remaining Number of Competitors**
BancShares Pre-Consummation	96	$65.6M	<0.1	1962	0	140
CIT	105	$44.8M	<0.1			
BancShares Post-Consummation	86	$110.4M	<0.1			