

FEDERAL RESERVE SYSTEM

Benchmark Community Bank  
Kenbridge, Virginia

Order Approving the Acquisition of Assets, Assumption of Liabilities, and the  
Establishment of a Branch

Benchmark Community Bank (“Benchmark”), a state member bank subsidiary of Benchmark Bankshares, Inc. (“Benchmark Bankshares”), both of Kenbridge, Virginia, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”)<sup>1</sup> to acquire certain assets and assume certain liabilities of First Community Bank (“First Community”), a state member bank subsidiary of First Community Bankshares, Inc. (“First Community Bankshares”), both of Bluefield, Virginia.<sup>2</sup> In addition, Benchmark has applied under section 9 of the Federal Reserve Act (“FRA”)<sup>3</sup> and the Board’s Regulation H<sup>4</sup> to establish and operate a branch at the location of First Community’s branch. Under the proposal, Benchmark would assume approximately \$61.9 million of First Community’s \$2.7 billion in deposits as well as acquire approximately \$2.7 million of First Community’s assets.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the

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<sup>1</sup> 12 U.S.C. § 1828(c).

<sup>2</sup> As part of the transaction, Benchmark would acquire the premises of First Community located at 125 W. Atlantic Street, Emporia, Virginia (“Emporia branch”). Benchmark would not acquire any loans of the Emporia branch. The Emporia branch is First Community’s only branch in Emporia.

<sup>3</sup> 12 U.S.C. § 321.

<sup>4</sup> 12 CFR part 208.

Board's Rules of Procedure.<sup>5</sup> The time for submitting comments has expired, and no comments on the proposal were received. As required by the Bank Merger Act, a report on the competitive effects of the proposal was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation.

Benchmark, with consolidated assets of approximately \$1.0 billion, is part of the 975th largest insured depository organization in the United States, Benchmark Bankshares.<sup>6</sup> Benchmark, which operates in North Carolina and Virginia, controls approximately \$947 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>7</sup> Benchmark is the 39th largest insured depository institution in Virginia, controlling deposits of approximately \$828 million, which represent approximately 0.2 percent of the total deposits of insured depository institutions in that state.<sup>8</sup>

First Community, with consolidated assets of approximately \$3.2 billion, is part of the 368th largest insured depository organization in the United States, First Community Bankshares. First Community, which operates in North Carolina, Tennessee, Virginia, and West Virginia, controls approximately \$2.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. First Community is the 27th largest insured depository institution in Virginia, controlling deposits of approximately \$1.2 billion, which represent

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<sup>5</sup> 12 U.S.C. § 1828(c)(3); 12 CFR 262.3(b).

<sup>6</sup> Consolidated asset and national ranking data are as of December 31, 2021. Consolidated asset data reflect the size of the insured depository institution. National ranking data reflect the size of the consolidated insured depository organization.

<sup>7</sup> Consolidated national deposit and market share data are as of December 31, 2021. These data reflect the size of the insured depository institution. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

<sup>8</sup> State deposit ranking and deposit data are as of June 30, 2021. These data reflect the size of the insured depository institution.

approximately 0.3 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Benchmark Bankshares would become the 930th largest insured depository organization in the United States, and Benchmark would have consolidated assets of approximately \$1.1 billion, which would represent less than 1 percent of the total assets of insured depository organizations in the United States. Benchmark would control total consolidated deposits of approximately \$1.0 billion, which would represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Virginia, Benchmark would become the 38th largest insured depository institution, controlling deposits of approximately \$890 million, which would represent approximately 0.2 percent of the total deposits of insured depository institutions in that state.<sup>9</sup>

### ***Competitive Considerations***

The Bank Merger 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.<sup>10</sup> The Bank Merger 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.<sup>11</sup>

For the purposes of this application, Benchmark and First Community compete directly in the Emporia, Virginia, banking market (“Emporia banking

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<sup>9</sup> The home state of both Benchmark and First Community is Virginia. See 12 U.S.C. § 1828(c)(13)(C)(ii). Thus, the proposal is not subject to the requirements of section 18(c)(13) of the Bank Merger Act.

<sup>10</sup> 12 U.S.C. § 1828(c)(5)(A).

<sup>11</sup> 12 U.S.C. § 1828(c)(5)(B).

market”).<sup>12</sup> 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 Benchmark would control;<sup>13</sup> 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 (“DOJ”) Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);<sup>14</sup> the number of competitors that would remain in the market; and other characteristics of the market.

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<sup>12</sup> The Emporia banking market is defined as the independent city of Emporia, Virginia, and Greensville County, Virginia.

<sup>13</sup> Local 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. 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). In some markets noted in this order, the market concentration and market share data are based on calculations in which the deposits of certain thrift institutions are weighted at 100 percent. The Board previously has indicated that it may consider the competitiveness of a thrift institution at a level greater than 50 percent of its deposits when appropriate if competition from the institution closely approximates competition from a commercial bank. See, e.g., Banknorth Group, Inc., 75 Federal Reserve Bulletin 703 (1989). In evaluating when it is appropriate to increase the weighting of a thrift’s deposits in a banking market, the Board considers whether the thrift serves as a significant source of commercial loans in the market and provides a broad range of consumer, mortgage, and other banking products. See, e.g., The PNC Financial Services Group, Inc., 95 Federal Reserve Bulletin B1 (2009); The PNC Financial Services Group, Inc., 93 Federal Reserve Bulletin C65 (2007); and First Union Corporation, 84 Federal Reserve Bulletin 489 (1998).

<sup>14</sup> In applying the DOJ Bank Merger Guidelines issued in 1995 ([see https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995](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

In the Emporia banking market, the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines when using initial competitive screening data. Benchmark is the 6th largest insured depository institution in the Emporia market, controlling approximately \$19.7 million in deposits, which represent 6.2 percent of market deposits. First Community is the 2nd largest insured depository institution in the market, controlling approximately \$65.8 million in deposits, which represent 20.6 percent of market deposits. On consummation, Benchmark would become the largest insured depository institution in the market, controlling approximately \$85.6 million in deposits, which represent 26.8 percent of market deposits. The HHI in the market would increase 256 points, from 1870 to 2126.

The Board has considered whether there are any factors that would either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Emporia banking market.<sup>15</sup> Several factors indicate that the increase in concentration in the Emporia banking market, as measured by the HHI and the market share of the combined organization, overstates the potential competitive effects of the proposal in the market. After consummation, four other depository institutions, in addition to Benchmark, would remain in the market, two with more than 20 percent market share and two with more than 10 percent market share.

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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](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](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

<sup>15</sup> The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and the resulting level of, concentration in a banking market. See NationsBank Corporation, 84 Federal Reserve Bulletin 129 (1998).

The presence of these market competitors suggests that Benchmark would have limited ability unilaterally to offer less attractive terms to consumers and that these competitors would be able to exert competitive pressure on Benchmark in the Emporia banking market.

In addition, Benchmark's branch in the Emporia banking market does not have a drive-through facility or an ATM, while First Community's branch has both. Accordingly, Benchmark's deposit share may overstate its attractiveness for retail customers.<sup>16</sup> Moreover, First Community's branch in the Emporia banking market does not engage in a significant volume of lending, including loans to small businesses, relative to its reported deposits. Benchmark would not acquire any loans as part of the proposed transaction, and 33 active small business lenders would remain in the Emporia banking market.

The Board concludes that, taken together, the foregoing circumstances mitigate the potential competitive effects of the proposal.

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, including the Emporia 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 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 Emporia banking market or any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

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<sup>16</sup> In general, ATMs and drive-throughs are common features of retail bank branches. The lack of an ATM or drive-through lane suggests that Benchmark's deposits in the Emporia market may overstate Benchmark's participation in the local retail market. Rather, those deposits may draw more from non-retail customers or from outside the Emporia market.

### *Financial, Managerial, and Other Supervisory Considerations*

In reviewing a proposal under the Bank Merger Act, including a purchase and assumption transaction such as this, the Board considers the financial and managerial resources and the future prospects of the institutions involved.<sup>17</sup> In its evaluation of financial factors, the Board reviews information regarding the financial condition of the institutions involved. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance. The Board evaluates the financial condition of the combined insured depository institution, 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 combined insured depository institution 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 institutions involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Benchmark is well capitalized and would remain so on consummation of the proposal. Benchmark appears to have adequate financial resources to effect the proposal. The asset quality, earnings, and liquidity of Benchmark are consistent with approval, and Benchmark appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the deposits to be assumed and assets to be purchased. In addition, the future prospects of Benchmark are considered consistent with approval.

The Board also has considered the managerial resources of the institutions involved and of Benchmark after consummation of the proposal. The Board has reviewed the examination records of Benchmark and First Community, including assessments of their management, risk-management systems, and operations. In addition,

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<sup>17</sup> 12 U.S.C. § 1828(c)(5).

the Board has considered information provided by Benchmark; the Board's supervisory experiences with the institutions; and the institutions' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

Benchmark is considered to be well managed. The directors and senior executive officers of Benchmark have substantial knowledge of and experience in the banking sector, and the bank's risk-management program appears consistent with approval of this expansionary proposal. Benchmark has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address the post-integration process for this proposal. Benchmark would apply its risk-management policies, procedures, and controls at the branch following the transaction, and these policies, procedures, and controls are considered acceptable from a supervisory perspective. In addition, Benchmark's management has the experience and resources to operate the bank in a safe and sound manner after consummation of the proposal.

Based on all the facts of record, including Benchmark's supervisory record, managerial and operational resources, and plans for operating the bank after consummation, the Board concludes that considerations relating to the financial and managerial resources and the future prospects of the institutions involved in the proposal, as well as the records of effectiveness of Benchmark and First Community in combatting money-laundering activities, are consistent with approval.

### ***Convenience and Needs Considerations***

In acting on a proposal under the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.<sup>18</sup> In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. The Board places particular emphasis on the records of the relevant depository institutions under the Community

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<sup>18</sup> 12 U.S.C. § 1828(c)(5).



Reinvestment Act (“CRA”).<sup>19</sup> 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 operation,<sup>20</sup> 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.<sup>21</sup>

In addition, the Board considers the banks’ overall compliance records, including with respect to fair lending. 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 supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicant. The Board also may consider the institution’s business model, its marketing and outreach plans, its 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 Benchmark and First Community; the consumer compliance, including fair lending, records of Benchmark and First Community; confidential supervisory information; and information provided by Benchmark.

*Records of Performance under the CRA*

In evaluating the convenience and needs factor and CRA performance of an institution, the Board generally considers the institution’s most recent CRA evaluation, as well as information and views provided by the appropriate federal financial supervisors. In addition, the Board considers information provided by the applicant and by any public

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<sup>19</sup> 12 U.S.C. § 2901 et seq.

<sup>20</sup> 12 U.S.C. § 2901(b).

<sup>21</sup> 12 U.S.C. § 2903.

commenters. In this case, the Board considered the supervisory views of the Federal Reserve Bank of Richmond (“Reserve Bank”) with respect to Benchmark and First Community.<sup>22</sup>

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.<sup>23</sup> 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 First Community, 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 of 1975 (“HMDA”)<sup>24</sup>, 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

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<sup>22</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 81 Federal Register 48,506, 48,548 (July 25, 2016).

<sup>23</sup> 12 U.S.C. § 2906.

<sup>24</sup> 12 U.S.C. § 2801 et seq.

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;<sup>25</sup> (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.<sup>26</sup> 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.<sup>27</sup>

Intermediate small banks, such as Benchmark, are subject to a streamlined version of the Lending Test for large banks<sup>28</sup> and to a community development test ("Community Development Test"). The Community Development Test evaluates the number and amounts of the institution's community development loans and qualified investments; the extent to which the institution provides community development services; and the institution's responsiveness through such activities to community development lending, investment, and service needs.<sup>29</sup>

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<sup>25</sup> Examiners also consider the number and amounts of small business and small farm loans made 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).

<sup>26</sup> See 12 CFR 228.22(b).

<sup>27</sup> See 12 CFR 228.23 & .24.

<sup>28</sup> See 12 CFR 228.26(b).

<sup>29</sup> See 12 CFR 228.26(c).

### *CRA Performance of Benchmark*

Benchmark was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the Reserve Bank, as of April 22, 2019 (“Benchmark Evaluation”).<sup>30</sup> The bank received a “Satisfactory” rating for the Lending Test and an “Outstanding” rating for the Community Development Test.<sup>31</sup>

With respect to the Lending Test, examiners found that Benchmark’s lending levels were considered more than reasonable given the institution’s size, financial condition, market conditions, and local credit needs, and that a substantial majority of the bank’s loans were made in its AAs. With respect to the Community Development Test, examiners found that Benchmark’s responsiveness to community development needs of the bank’s AAs through community development loans, qualified investments, and services was excellent.

### *CRA Performance of First Community*

First Community was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the Reserve Bank, as of April 19, 2021 (“First Community Evaluation”).<sup>32</sup> The bank received “High Satisfactory” ratings for the Lending and Investment Tests and a “Low Satisfactory” rating for the Service Test.<sup>33</sup>

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<sup>30</sup> The Benchmark Evaluation was conducted using Intermediate Small CRA Examination Procedures. Examiners reviewed residential mortgage lending activity reported from 2016 and 2017; small business loans from 2017; and certain community development loans.

<sup>31</sup> The Benchmark Evaluation involved a full-scope review of the Lunenburg, Virginia, Non-Metropolitan Statistical Area (“MSA”); Raleigh, North Carolina; and the Henderson, North Carolina, Non-MSA.

<sup>32</sup> The First Community Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed residential mortgage, small business, and small farm lending activity reported from January 1, 2018, through December 31, 2019, and community development loans originated from September 10, 2018, through April 19, 2021, or renewed during that period.

<sup>33</sup> The First Community Evaluation involved a full-scope review of the Kingsport-Bristol- Johnson City, Tennessee-Virginia AA and a limited-scope review of the Beckley,

With respect to the Lending Test, examiners found that First Community's lending levels reflected good responsiveness to the credit needs in the bank's AAs and that a substantial majority of the bank's loans were made in the bank's AAs. With respect to the Investment Test, examiners found that First Community had a significant level of qualified investments, particularly those not routinely provided by private investors, and occasionally was in a leadership position. Examiners noted that First Community exhibited good responsiveness to credit and community development needs.

With respect to the Service Test, examiners found that First Community's service delivery systems were reasonably accessible to geographies and individuals of different income levels in the bank's AAs. Examiners noted that First Community's record of opening and closing branches generally had not adversely affected the accessibility of the bank's delivery systems, particularly to LMI geographies and LMI individuals.

#### *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. The First Community branch location, which would be retained following the transaction, is in an underserved or distressed census tract. Benchmark represents that the proposal would enable the bank to provide additional services in the Emporia market, including ATM and drive-through banking services and a larger loan capacity. Benchmark indicates that it offers a variety of traditional banking products and services, such as retail and commercial banking and lending, and represents that no significant changes in products and services are anticipated as a result of the proposed transaction.

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West Virginia, MSA and the Roanoke, Virginia, and Emporia, Virginia, Non-MSAs. The Knoxville and Sevier, Tennessee, Non-MSAs were not evaluated because the bank delineated these AAs in 2020, and the evaluation did not include consideration of 2020 data.

### *Branch Closures*

The Board considers the impact of branch closures, consolidations, and relocations that occur in connection with a proposal on the convenience and needs of the communities to be served by the resulting institution.<sup>34</sup> Federal banking law requires that a bank must provide notice to the public and the appropriate federal supervisory agency before a branch is closed.<sup>35</sup> However, among other things, the notice requirements do not apply with respect to branch consolidations or relocations that occur within an immediate neighborhood and do not substantially affect the nature of the business or customers served.<sup>36</sup>

As part of the proposed transaction, Benchmark would acquire the existing location of First Community's Emporia branch, which is located 0.25 miles from Benchmark's branch in the market. Benchmark would close its existing branch location and relocate the business of that branch to the location of the First Community branch, consolidating that business with the assets and liabilities being acquired from First Community.<sup>37</sup> The Board concludes that the relocation and consolidation would not substantially affect the nature of the businesses or customers served given that it would occur within the immediate neighborhood.

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<sup>34</sup> Particular attention is paid to the effect of any closures, consolidations, or relocations on LMI, distressed or underserved nonmetropolitan middle-income, and majority-minority communities. In addition, the federal banking supervisory agencies evaluate a bank's record of opening and closing branches, particularly branches located in LMI geographies or primarily serving LMI individuals, as part of the CRA examination process.

<sup>35</sup> See 12 U.S.C. § 1831r-1. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

<sup>36</sup> 12 U.S.C. § 1831r-1(e).

<sup>37</sup> See 12 CFR 208.6(e).

### *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 Benchmark, 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*

The Bank Merger Act requires the Board to consider the risk of the proposal “to the stability of the United States banking or financial system.”<sup>38</sup>

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.<sup>39</sup> 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

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<sup>38</sup> 12 U.S.C. § 1828(c)(5).

<sup>39</sup> Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage on the broader economy.<sup>40</sup>

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.<sup>41</sup>

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves an acquisition of less than \$10 billion in assets and a pro forma organization with less than \$100 billion in assets. 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.<sup>42</sup>

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.

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<sup>40</sup> For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order No. 2012-2 (February 14, 2012).

<sup>41</sup> 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.

<sup>42</sup> Benchmark and First Community are predominately engaged in retail and commercial banking activities. Benchmark 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.



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.

### ***Establishment of Branches***

Benchmark has applied under section 9 of the FRA to establish and operate a branch at the location of the acquired branch of First Community.<sup>43</sup> The Board has assessed the factors it is required to consider when reviewing an application under that section. Specifically, the Board has considered Benchmark's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises.<sup>44</sup> For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

### ***Conclusion***

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Benchmark with all the

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<sup>43</sup> See 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. A national bank may establish and operate a new branch within a state in which it is situated, if such establishment and operation is authorized under applicable state law. 12 U.S.C. § 36(c). A national bank also may retain any branch following a merger that under state law may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. See 12 U.S.C. § 36(b)(2), (c). Upon consummation, Benchmark's branch would be permissible under applicable state law. See Va. Code § 6.2-831.

<sup>44</sup> 12 U.S.C. § 322; 12 CFR 208.6. Pursuant to section 24A of the FRA, 12 U.S.C. § 371d, Benchmark requested authorization to invest up to \$1.6 million in bank premises to make improvements to the Emporia branch. Having considered all the relevant statutory factors, the Board does not object to the proposed investment. Upon consummation of the proposed transaction, Benchmark's investment in bank premises would remain within the legal requirements of 12 CFR 208.21.

conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the proposal. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors,<sup>45</sup> effective July 1, 2022.

*Michele Taylor Fennell (signed)*  
Michele Taylor Fennell  
Deputy Associate Secretary of the Board

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<sup>45</sup> Voting for this action: Chair Powell, Vice Chair Brainard, Governors Bowman, Waller, Cook and Jefferson.