

FEDERAL RESERVE SYSTEM

U.S. Bancorp  
Minneapolis, Minnesota

Order Approving the Acquisition of a Bank

U.S. Bancorp (“USB”), Minneapolis, Minnesota, a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”),<sup>1</sup> has requested the Board’s approval under section 3 of the BHC Act<sup>2</sup> to acquire MUFG Union Bank, National Association (“Union Bank”), San Francisco, California, a wholly owned subsidiary of MUFG Americas Holdings Corporation (“MUAH”), New York, New York, and an indirect, wholly owned subsidiary of Mitsubishi UFJ Financial Group, Inc. (“MUFG”), Tokyo, Japan.<sup>3</sup>

USB, with consolidated assets of \$591.4 billion, is the eighth largest insured depository organization in the United States. USB controls approximately \$467.1 billion in consolidated deposits, which represent 2.5 percent of the total amount of deposits of insured depository institutions in the United States.<sup>4</sup> USB controls U.S.

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<sup>1</sup> 12 U.S.C. § 1841 et seq.

<sup>2</sup> 12 U.S.C. § 1842.

<sup>3</sup> Following the proposed acquisition, USB would operate Union Bank as a separate bank until the second quarter of 2023, when Union Bank would be merged with and into USB’s subsidiary bank, U.S. Bank National Association (“U.S. Bank”), Cincinnati, Ohio, with U.S. Bank surviving. The merger of Union Bank into U.S. Bank is subject to the approval of the Office of the Comptroller of the Currency (“OCC”) under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”). 12 U.S.C. § 1828(c). The OCC approved the Bank Merger Act application on October 14, 2022.

<sup>4</sup> Consolidated asset, national deposit, ranking, and market share data are as of June 30, 2022. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

Bank, which operates in Arkansas, Arizona, California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oregon, South Dakota, Tennessee, Utah, Washington, Wisconsin, and Wyoming. U.S. Bank has total assets of \$582.3 billion.<sup>5</sup>

Union Bank, with total assets of approximately \$124.7 billion, is the 34th largest insured depository institution in the United States. Union Bank controls approximately \$92.4 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Union Bank has operations in Arizona, California, Oregon, and Washington.

On consummation of the proposal, USB would become the seventh largest insured depository organization in the United States, with consolidated assets of approximately \$698.7 billion, which would represent 2.4 percent of the total assets of insured depository organizations in the United States.<sup>6</sup> USB would control total consolidated deposits of approximately \$558.2 billion, which would represent 2.9 percent of the total amount of deposits of insured depository institutions in the United States.<sup>7</sup>

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<sup>5</sup> Total assets are as of June 30, 2022. U.S. Bancorp also controls three national trust banks: U.S. Bank Trust Company, National Association, Portland, Oregon; U.S. Bank Trust National Association, Wilmington, Delaware; and U.S. Bank Trust National Association SD, Sioux Falls, South Dakota.

<sup>6</sup> Prior to consummation by USB of the Union Bank acquisition, MUFG Bank Ltd. (“MUFG Bank Japan”), Tokyo, Japan, would acquire, through its U.S. branches and subsidiaries, the global corporate and investment banking (“GCIB”) business of Union Bank. Union Bank would transfer to MUFG Bank Japan approximately \$21.2 billion in loans, certain other assets and additional liabilities, and two of Union Bank’s subsidiaries, which represent the majority of the GCIB business. Union Bank has filed an application with the Federal Deposit Insurance Corporation (“FDIC”) to allow MUFG Bank Japan to purchase certain of Union Bank’s assets and assume certain of Union Bank’s liabilities, including deposits, pursuant to the Bank Merger Act.

<sup>7</sup> See Appendix I for deposit ranking and deposit data by state, for states in which USB and Union Bank both have banking offices. State deposit ranking and deposit data are as of June 30, 2021, unless otherwise noted. State deposit ranking and deposit data do not

### ***Public Comments on the Proposal***

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (86 Federal Register 57674 (October 18, 2021)).<sup>8</sup> The Board extended the initial period for public comment to accommodate public interest in this proposal and provided interested persons until March 11, 2022, a total of more than 145 days, to submit written comments (87 Federal Register 8248 (February 14, 2022)). The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

In addition, the Board held a virtual public meeting to provide interested persons an opportunity to present oral testimony on the factors that the Board is required to consider under the BHC Act.<sup>9</sup> At the public meeting, 120 individuals provided oral testimony, and many of those individuals also submitted written comments. In total, the Board received approximately 214 comments from individuals and organizations on the proposal through oral testimony, written comments, or both. Commenters included community groups, nonprofit organizations, customers of the two banking organizations, and other interested organizations and individuals.

A significant number of commenters supported the proposal.<sup>10</sup> Many of these commenters contended that the proposal would benefit communities and community organizations throughout the footprints of U.S. Bank and Union Bank as a result of increased resources and services provided by the combined organization. Several commenters commended U.S. Bank for its commitment to local communities and

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reflect Union Bank's contemplated sale of assets and transfer of liabilities to MUFG Bank Japan.

<sup>8</sup> 12 CFR 262.3(b).

<sup>9</sup> The virtual public meeting was held jointly with the OCC on March 8, 2022.

<sup>10</sup> The Board received approximately 107 comments in support of the proposal (orally or in writing, or both). Of these commenters, approximately 68 commenters provided oral comments in support of the proposal at the public meeting.

described favorable experiences related to small business, community development, mortgage lending, affordable housing, and community investment programs. In addition, some commenters praised both U.S. Bank's and Union Bank's charitable contributions and noted that officers and employees of these institutions frequently provide valuable resources and services to community organizations.

A significant number of commenters opposed the proposal, requested that the Board approve the proposal subject to certain conditions, or otherwise expressed concerns about the proposal.<sup>11</sup> Many commenters stated the proposal would not result in public benefits. Some commenters criticized the records of performance of both institutions in meeting the credit needs of their communities, particularly minority communities and low- and moderate-income ("LMI") communities. Several commenters raised fair lending-related concerns, asserting that U.S. Bank lagged in mortgage lending to minority communities and individuals, as compared to peer institutions. Several commenters expressed concern that the proposal would result in less investment in affordable housing. Many commenters expressed concern that the proposal would result in branch closures and job losses.

In addition, some commenters expressed concern that the proposal would significantly reduce competition throughout the banking markets in which U.S. Bank and Union Bank have overlapping operations. Some commenters also asserted that the combined institution would pose a risk to U.S. financial stability, with the resulting institution being "too big to fail."

In evaluating the statutory factors under the BHC Act, the Board considered the information and views presented by all commenters, including information presented

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<sup>11</sup> The Board received approximately 107 comments that opposed or raised other concerns regarding the proposal (orally or in writing, or both). Of these commenters, approximately 52 commenters provided oral comments in opposition to the proposal or raised other concerns in their oral comments at the public meeting. One commenter, Daily Kos, submitted a petition in opposition to the proposal, with the signatures of approximately 40,552 individuals. Some of these signatories included additional written comments in their respective signature blocks.

at the public meeting and in written submissions. The Board also considered all of the information presented in the application and supplemental filings by USB, various reports filed by the relevant companies, and publicly available information. In addition, the Board consulted with the OCC, the Department of Justice (“DOJ”), and the Consumer Financial Protection Bureau (“CFPB”), and reviewed confidential supervisory information, including examination reports on the depository institution holding company and the depository institutions involved. After a review of all the facts of record, and for the reasons discussed in this order, the Board concludes that the statutory factors it is required to consider under the BHC Act are consistent with approval of the proposal.

### ***Factors Governing Board Review of the Transaction***

The BHC Act sets forth the factors that the Board is required to consider when reviewing the merger of bank holding companies or the acquisition of banks.<sup>12</sup> These factors include the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; the effectiveness of the involved institutions in combatting money-laundering activities; the convenience and needs of the communities to be served, including the records of performance under the Community Reinvestment Act of 1977 (“CRA”)<sup>13</sup> of the insured depository institutions involved in the transaction; and the extent to which the proposal would result in greater or more concentrated risks to the stability of the U.S. banking or financial system. For proposals involving interstate bank acquisitions by bank holding companies, the Board also must consider the concentration of deposits as a percentage of the total deposits controlled by insured depository institutions in the United States and in relevant individual states, as well as compliance with the other provisions of section 3(d) of the BHC Act.<sup>14</sup>

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<sup>12</sup> See 12 U.S.C. § 1842.

<sup>13</sup> 12 U.S.C. § 2901 et seq.

<sup>14</sup> 12 U.S.C. § 1842(d).

### *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.<sup>15</sup> The Board may not approve under this provision 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.<sup>16</sup> When determining whether to approve an application under this provision, the Board must take into account the record of the applicant's depository institution under the CRA and the applicant's record of compliance with applicable state community reinvestment laws.<sup>17</sup> In addition, the Board may not approve an interstate application under this provision if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.<sup>18</sup>

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<sup>15</sup> 12 U.S.C. § 1842(d)(1)(A).

<sup>16</sup> 12 U.S.C. § 1842(d)(1)(B).

<sup>17</sup> 12 U.S.C. § 1842(d)(3).

<sup>18</sup> 12 U.S.C. § 1842(d)(2)(A) and (B). Under section 3(d) of the BHC Act, the acquiring and target organizations 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. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch.

For purposes of this provision, the home state of USB is Wisconsin.<sup>19</sup> Union Bank is located in California, Oregon, and Washington.<sup>20</sup> USB is well capitalized and well managed under applicable law. Union Bank has been in existence for more than five years, and U.S. Bank has an “Outstanding” rating under the CRA.<sup>21</sup>

On consummation of the proposed transaction, USB would control 2.9 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Of the states in which USB and Union Bank have overlapping banking operations, Washington imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control, and California and Oregon do not impose a limit.<sup>22</sup> The combined organization would control no more than approximately 10.76 percent of the total amount of deposits of insured depository institutions in Washington, 7.09 percent in California, and 21.68 percent in Oregon.<sup>23</sup> Accordingly, in light of all the facts of record, the Board is not precluded from approving the proposal under section 3(d) of the BHC Act.

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<sup>19</sup> 12 U.S.C. § 1841(o)(4). A bank holding company’s home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

<sup>20</sup> PurePoint Financial (“PurePoint”), Union Bank’s digital-only banking division, maintains an operations center in Arizona. The location serves as a central booking location for PurePoint’s deposits. This office is not a branch. Accordingly, Union Bank is not “located” in Arizona for purposes of section 3(d) of the BHC Act.

<sup>21</sup> Two of the jurisdictions in which USB operates—Illinois and Washington—have state community reinvestment laws. See 205 Ill. Comp. Stat. Ann. § 735/35-1 to 35-45; Wash. Rev. Code Ann. § 30A.60.010. However, these state community reinvestment laws do not apply to USB.

<sup>22</sup> Wash. Rev. Code Ann. § 30A.49.125(6).

<sup>23</sup> State deposit data do not reflect Union Bank’s contemplated sale of assets and transfer of liabilities to MUFG Bank Japan.

### *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.<sup>24</sup> 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.<sup>25</sup>

USB's subsidiary bank, U.S. Bank, competes directly with Union Bank in 25 banking markets located throughout Arizona, California, Oregon, and Washington. The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the relative share of total deposits in insured depository institutions in the markets ("market deposits") that USB would control;<sup>26</sup> the concentration level of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the DOJ Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");<sup>27</sup> the number of

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<sup>24</sup> 12 U.S.C. § 1842(c)(1)(A).

<sup>25</sup> 12 U.S.C. § 1842(c)(1)(B).

<sup>26</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); 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).

<sup>27</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



competitors that would remain in the markets; other characteristics of the markets; and commitments made by USB to divest branches in certain markets.<sup>28</sup> The Board also has considered the public comments on the competitive effects of the proposal.<sup>29</sup>

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in each of the 25 banking markets in which U.S. Bank and Union Bank compete. On consummation of the proposal, one banking market would remain unconcentrated, 21 markets would remain moderately concentrated, and three markets would remain highly concentrated, as

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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](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>28</sup> In connection with the transaction, USB has agreed to divest three branches, representing approximately \$480 million in deposits, all in California. USB has committed that it will execute, prior to consummation of the proposed merger, a sales agreement with a competitively suitable banking organization. USB has provided a similar commitment to the DOJ. USB also has committed to complete the divestiture of branches within 180 days after consummation of the proposed transaction. In addition, USB has committed that if the proposed divestiture is not completed within the 180-day period, USB would transfer the unsold branches to an independent trustee, who would be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchaser must be deemed acceptable to the Board. See, e.g., BankAmerica Corporation, 78 Federal Reserve Bulletin 338 (1992); United New Mexico Financial Corporation, 77 Federal Reserve Bulletin 484 (1991).

<sup>29</sup> Some commenters expressed concern that the proposal would increase concentration in banking markets nationally and throughout California. One commenter asserted that the merger would result in monopoly concentration and that eventually there would be only two large banks in the United States.

measured by the HHI, according to the DOJ Bank Merger Guidelines, and numerous competitors would remain in the markets.<sup>30</sup> In addition, to mitigate further any potential anticompetitive effects, USB has committed to divest branches in three markets.<sup>31</sup> After considering these divestitures, the proposal would continue to be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the relevant banking markets.

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that, if the divestitures discussed above are made in accordance with the terms of the commitments, the DOJ would support a conclusion by the Board that the transaction likely would not have a significant adverse effect on competition. 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 banking markets in which U.S. Bank and Union Bank compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

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

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved, the effectiveness of the institutions in combatting money laundering, and any public comments on the proposal.<sup>32</sup> In its evaluation of financial

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<sup>30</sup> These banking markets and the competitive effects of the proposal in these markets are described in Appendix II.

<sup>31</sup> USB has committed to divest one branch in each of the Hesperia-Apple Valley-Victorville, the Palm Springs-Cathedral City-Palm Desert, and the Riverside-San Bernardino banking markets, all in California.

<sup>32</sup> 12 U.S.C. § 1842(c)(2), (5), and (6).

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. 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.

USB, U.S. Bank, and Union Bank are well capitalized, and the combined organization would remain so upon consummation of the proposal. USB would acquire Union Bank through a combination of cash and an exchange of shares and subsequently would merge Union Bank with and into U.S. Bank.<sup>33</sup> The capital, asset quality, earnings, and liquidity of USB are consistent with approval, and USB appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of USB, U.S. Bank, and Union Bank, including

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<sup>33</sup> Upon consummation of the proposal, MUAH would control less than 5 percent of the outstanding common stock of USB and would be presumed not to control USB. See 12 U.S.C. § 1841(a)(3). USB has the financial resources to effect the proposed transaction.

assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by USB; 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 the public comments on the proposal.<sup>34</sup>

USB and its subsidiary depository institutions are considered to be well managed. USB’s directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and USB’s risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered USB’s plans for implementing the proposal. USB has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal.<sup>35</sup> In addition, USB’s management has the experience and resources to operate the resulting organization in a safe and sound manner.<sup>36</sup>

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<sup>34</sup> One commenter alleged that USB failed to provide the Board with adequate assurances that it would make information available to the Board regarding the operations or activities of USB and any of its affiliates. USB has provided the Board with such assurances.

<sup>35</sup> USB currently is a “Category III banking organization” for purposes of the Board’s enhanced prudential standards rule, 12 CFR part 252. Prior to becoming a Category II banking organization, USB has committed to submit quarterly implementation plans for complying with the Category II requirements. USB also has committed to meet Category II requirements by the earlier of (i) the date it is obligated to do so by regulation or (ii) by December 31, 2024, if notified by the Federal Reserve by January 1, 2024, to comply with such requirements. The Federal Reserve would likely provide such a notification unless the firm can demonstrate through its quarterly implementation plan a credible path to reducing its projected risk profile such that the requirements should not apply (including, for example, a path toward a material reduction in assets).

<sup>36</sup> One commenter expressed concerns regarding compliance by USB, U.S. Bank, and Union Bank with the Bank Secrecy Act (“BSA”) and anti-money-laundering regulations. This commenter referred to a Consent Order that U.S. Bank entered into with the OCC in February 2018, related criminal charges and fines by the U.S. Attorney’s Office against USB in February 2018, and a related assessment of a civil money penalty against

Based on all the facts of record, including USB's supervisory record, managerial and operational resources, plans for operating the combined organization after consummation, and public comments received on the proposal,<sup>37</sup> the Board determines that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of

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U.S. Bank's Chief Operational Risk Officer in 2020. The OCC terminated the Consent Order with U.S. Bank on November 19, 2018. The commenter also referred to a Consent Order entered into with the OCC involving the U.S. branches of MUFG Bank Japan, the foreign parent bank of Union Bank, regarding BSA violations in 2019. The Board has confirmed that Union Bank was not involved in the conduct that gave rise to the MUFG Bank Japan Consent Order.

In addition, the commenter referred to a Consent Order that Union Bank entered into with the OCC in September 2021, related to deficiencies in technology and operational risk governance, and requested public disclosure of Union Bank's remediation plans. The Board has considered information provided by USB, has reviewed confidential supervisory information, and has consulted with the OCC with respect to the matters at issue in the 2021 Consent Order.

One commenter expressed concern that MUFG continues to do business in Russia. USB, U.S. Bank, and Union Bank are not implicated by this comment. In addition, each is required to comply with the sanctions programs administered by the Office of Foreign Assets Control.

Some commenters expressed concerns that the combined bank would increase fossil fuel funding and asserted that certain emissions information is not sufficiently disclosed. Another commenter contended that the merger should not be approved due to the impediments it would pose to transitioning to a low carbon economy. In response to these comments, USB represents that it has taken steps to enhance its assessment of climate-related risks posed to the firm, and the Board has consulted with the OCC regarding the risk management policies and procedures of U.S. Bank.

<sup>37</sup> Commenters expressed concerns regarding the level of diversity among U.S. Bank's employees and officers and about U.S. Bank preserving Union Bank's current business relationships with minority-owned suppliers. These comments concern matters that are outside the scope of the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. See CIT Group, Inc., FRB Board Order No. 2015-20 at 11 n.24 (July 19, 2015); Bank of America Corporation, 90 Federal Reserve Bulletin 217, 223 n.31 (2004); see also Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973).

effectiveness of USB and Union Bank 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.<sup>38</sup> 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. In its review, the Board places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation.<sup>39</sup> The CRA also 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 LMI neighborhoods, in evaluating bank expansionary proposals.<sup>40</sup>

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 institution's business model and marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

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<sup>38</sup> 12 U.S.C. § 1842(c)(2).

<sup>39</sup> 12 U.S.C. § 2901(b).

<sup>40</sup> 12 U.S.C. § 2903.

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 U.S. Bank and Union Bank, the fair lending and compliance records of these banks, the supervisory views of the OCC and the CFPB, confidential supervisory information, information provided by USB, and public comments on the proposal.

*Summary of Public Comments on Convenience and Needs*

As noted above, the Board received a total of 214 comments on the proposal from community groups, nonprofit organizations, customers of the two banking organizations, and other interested organizations and individuals. The Board held a public meeting to facilitate receiving comments on the proposal from interested members of the public. A significant number of comments were submitted, both orally and in writing, through this process.

Many commenters supported the proposal.<sup>41</sup> In general, these commenters asserted that U.S. Bank and Union Bank provide valuable services to their communities. Commenters contended that the proposal would provide additional opportunities for community groups as well as LMI and minority communities. These commenters also praised U.S. Bank and its management for the bank's community outreach efforts and support for various community development programs and initiatives, including programs that support affordable housing, provide access to affordable financial products for LMI individuals, and support small businesses and businesses owned by minority individuals. These commenters also noted U.S. Bank's support for community development finance institutions, minority depository institutions, arts programs, as well as programs that support LMI and minority youth, veterans, and individuals with disabilities. Some commenters commended U.S. Bank for its work in improving financial inclusion.

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<sup>41</sup> Several commenters alleged that U.S. Bank encouraged grantees to submit public comments in support of the application and discouraged grantees from submitting adverse comments. The Board invited comments from all members of the public and considered all timely, substantive comments on the application.

The Board also received a number of comments opposing or otherwise expressing concerns about the proposal. Several commenters alleged that the merger would not meet the convenience and needs of the LMI and minority communities in which the combined organization would operate, particularly in California. One commenter alleged that U.S. Bank disproportionately donates to and invests in community organizations and funds that are not led by and do not serve African American and Hispanic communities. Some commenters asserted that the merger would reduce competition for low-income housing tax credit (“LIHTC”) investments, and one commenter suggested that the merger would reduce the construction of new affordable housing. Several commenters also expressed concerns regarding U.S. Bank’s foreclosure prevention programs.

Many commenters commended Union Bank’s affordable product offerings, small business loan programs, competitive loan rates, its community investments and donations, and its community reinvestment and development staff, but expressed concern about losing those products, donations, and relationships.<sup>42</sup> One commenter alleged that U.S Bank has been slow to hire employees, resulting in longer customer wait times and

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<sup>42</sup> For example, many commenters expressed concerns about whether the combined institution would continue to offer Union Bank’s special purpose credit product for small businesses, and one commenter also expressed concern about the continuation of Union Bank programs supporting women-owned small businesses.



reduction in quality of service.<sup>43</sup> Some commenters also expressed concern that the proposed merger could result in job losses.<sup>44</sup>

Commenters also expressed CRA and fair lending concerns with U.S. Bank's lending activities. Several commenters alleged that U.S. Bank lags behind its peers in mortgage applications and originations for LMI census tracts and in lending to African American, Hispanic, Native American, and LMI borrowers and communities in California. Specifically, these commenters alleged that an analysis of U.S. Bank's lending activity reflects redlining risks and that there are significant disparities in applications from, lending to, approvals for, and denials to African American and Hispanic borrowers as well as majority-minority and majority African American or Hispanic neighborhoods in California. These commenters also allege U.S. Bank's subprime loan pricing exhibits significant disparities with respect to Hispanic borrowers and in majority African American and Hispanic neighborhoods.

One commenter alleged, based on data reported for 2020 under the Home Mortgage Disclosure Act of 1975 ("HMDA"),<sup>45</sup> that U.S. Bank made a disproportionately low number of home mortgage loans to African American and

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<sup>43</sup> Some commenters alleged U.S. Bank collects more overdraft fees than Union Bank as a share of noninterest income. Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available on certain terms or at certain rates, the CRA neither requires an institution to provide any specific types of products or services nor prescribes the costs charged for them. As discussed above, in evaluating the managerial resources of the organizations involved, the Board considers the institutions' records of compliance with consumer protection laws.

<sup>44</sup> USB states it is committed to retaining all of Union Bank's front-line branch employees following the bank merger. Nevertheless, the potential for job losses resulting from a merger is outside of the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the BHC Act. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973); see also Wells Fargo & Co., 82 Federal Reserve Bulletin 445 (1996); Community Bank System, Inc., FRB Order No. 2015-34 (November 18, 2015); KeyCorp, FRB Order No. 2016-12 (July 12, 2016); and BB&T Corp., FRB Order No. 2019-16 (November 19, 2019).

<sup>45</sup> 12 U.S.C. § 2801 et seq.

Hispanic borrowers in Los Angeles and San Francisco, California. Another commenter alleged, also based on HMDA data, that U.S. Bank made a disproportionately low number of home mortgage loans to African American borrowers in Florida, Michigan, and New York and expressed concerns about disparities in mortgage loans to African American borrowers by Union Bank in Oregon.<sup>46</sup>

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<sup>46</sup> U.S. Bank does not have branches in Michigan or New York. USB represents that U.S. Bank's mortgage market share in Michigan, New York, and Florida and Union Bank's share in Oregon are limited. USB states that U.S. Bank conducts outreach efforts in Michigan, including through monthly workshops for first-time home buyers, mortgage product training for African American real estate professionals in Detroit, and financial literacy training to African American consumers in Detroit; and support for down payment assistance through the Michigan State Housing Development Authority Michigan Homeownership Assistance fund for majority-minority census tract areas in several counties. USB states it also conducts outreach efforts in Florida, including through workshops for African American home purchasers, financial literacy counseling for potential homebuyers, mortgage product training for African American real estate professionals in Orlando, and participation in a Florida program that provides down payment and closing cost assistance to eligible frontline community workers. USB represents that Union Bank conducts outreach efforts in Oregon, including efforts to grow homeownership in CRA areas in Multnomah, Washington, and Clackamas counties, all in Oregon.

Commenters also requested that the Board condition its approval on U.S. Bank's establishment of a community benefits plan.<sup>47</sup> These commenters requested U.S. Bank to provide various types of community support.<sup>48</sup>

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<sup>47</sup> On May 9, 2022, USB announced a community benefits plan under which, over a five-year period, U.S. Bank would lend, invest, or donate \$100 billion nationally, including an estimated \$60 billion in California, to initiatives focused on communities of color and LMI borrowers and communities. The Board consistently has found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any private party. See, e.g., TriCo Bancshares, FRB Order No. 2022-09 at 9 n.20 (March 1, 2022); First Illinois Bancorp, Inc., FRB Order No. 2020-03 at 11 n.10 (August 26, 2020); Huntington Bancshares Inc., FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); CIT Group, Inc., FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); Citigroup Inc., 88 Federal Reserve Bulletin 485 (2002); Fifth Third Bancorp, 80 Federal Reserve Bulletin 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas ("AAs").

Some commenters requested that the Board require U.S. Bank to make the terms of the community benefits agreement public and, together with the OCC, monitor and, if necessary, enforce U.S. Bank's compliance with the terms of the agreement. As part of each federal banking agency's performance evaluation of the depository institution under the CRA, the federal banking agencies make public a description of the depository institution's activities to serve the credit needs of its AAs.

Additionally, one commenter submitted comments relating to an individualized mortgage servicing and foreclosure action. Complaints based on an individual customer transaction, such as a complaint relating to an individual loan denial or a loan foreclosure proceeding, generally are not considered to be substantive comments. See SR Letter 97-10 (April 24, 1997), <https://www.federalreserve.gov/boarddocs/srletters/1997/SR9710.htm>, and, thus, generally are not considered by the Board in its evaluation of the statutory factors governing the transaction.

<sup>48</sup> Specifically, commenters requested that the plan provide for affordable housing for and mortgage lending to minority and LMI communities and individuals; enhanced community development programs in the combined organization's footprint; continued charitable contributions; increased lending and engagement with minorities, minority-owned businesses, and small businesses; financial and nonfinancial investments in California; and increased accessibility for consumers for whom English is not their first language.

*Businesses of the Involved Institutions and Response to Public Comments*

U.S. Bank offers consumer and commercial loan and deposit products throughout its branch network across 27 states. These products and services include lending services, such as traditional credit products, as well as credit card services, lease financing and import/export trade, asset-backed lending, agricultural finance, and other products; depository services, such as checking accounts, savings accounts, and time certificate contracts; ancillary services, such as capital markets, treasury management, and receivable lock-box collections for corporate customers; and a full range of asset management and fiduciary services for individuals, estates, foundations, business corporations, and charitable organizations. Union Bank offers a variety of consumer and commercial banking, consumer finance, investment, asset management, and other financial products and services through offices located in Arizona, California, Oregon, and Washington.<sup>49</sup>

USB asserts that U.S. Bank has demonstrated a commitment to meeting the credit needs of the communities it serves, including through engagement in community development and outreach activities, sponsorship of community-based organizations, and lending and investment activities. USB states that, following the merger, U.S. Bank would continue and expand on the community development activities, programs, and services offered by Union Bank, including with respect to home mortgage products, small business loans, loans for affordable housing, and financing for affordable housing development projects. USB also states that U.S. Bank would continue and expand certain Union Bank initiatives, such as Union Bank's special purpose credit program designed to encourage small business loans for women-, veteran-, and minority-owned businesses.

In addition, USB represents that, following consummation of the merger, the combined bank would make more LIHTC investments than the banks currently make. USB asserts that U.S. Bank has a positive reputation with community organizations and

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<sup>49</sup> Union Bank has full-service branches in seven states. The bank has retail operations in California, Oregon, and Washington and has commercial bank operations in Georgia, Illinois, New York, and Texas.

LIHTC partners due to its willingness to take on challenging affordable housing projects. USB also asserts that U.S. Bank has been an active investor in affordable housing projects in California and has developed an expertise in financing more complex affordable housing developments. Regarding concerns related to foreclosure prevention, USB represents that U.S. Bank works closely with customers to preserve homeownership and employs foreclosure prevention methods early in the delinquency cycle, including through payment assistance, repayment plans, hardship loan modifications, and government assistance programs. USB states that the combined bank would work to preserve or enhance customer experience in assessing the retention of other Union Bank employees, including the CRA and community development employees.

USB denies the commenters' HMDA-related allegations and asserts that U.S. Bank's record of home mortgage lending does not indicate there are any statistically significant disparities in loan applications, approvals, denials, or originations in majority African American or majority-minority neighborhoods. USB states that, when considered in the context of nation-wide total rates of lending to these communities, U.S. Bank's record of mortgage originations for LMI borrowers, LMI census tracts, majority-minority census tracts, and Hispanic and Native American borrowers are aligned with peer originations. USB represents that U.S. Bank's loan underwriting and approval processes were designed with fair lending requirements in mind and notes that the bank has a separate division that independently completes in-house fair lending risk reviews. USB contends that U.S. Bank's originations as a percentage of applications received demonstrate consistency across different groups of borrowers. USB represents that U.S. Bank has a broad offering of mortgage products designed to meet the needs of LMI borrowers and minority communities. USB asserts that U.S. Bank is committed to supporting economic development in Native American communities, including through continued investments in LIHTCs and New Market Tax Credits. Additionally, USB asserts that it reviewed available HMDA data and found no evidence of redlining or significant disparities in lending by U.S. Bank in the segments identified by the commenters. USB states that U.S. Bank did not identify any statistically significant

disparities with respect to its subprime loan pricing in neighborhoods where more than 50 percent of the population was Hispanic or African American. USB also notes that the OCC's CRA performance evaluation of the U.S. Bank states that examiners did not identify that the bank engaged in discriminatory or other illegal credit practices.

*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 and the supervisory views of relevant federal supervisors, which in this case is the OCC with respect to both U.S. Bank and Union Bank.<sup>50</sup> 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.<sup>51</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 U.S. Bank and Union 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 HMDA, in addition to small business, small farm,

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<sup>50</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 81 Federal Register 48506, 48548 (July 25, 2016).

<sup>51</sup> 12 U.S.C. § 2906.

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 AAs; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;<sup>52</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>53</sup> The Investment Test evaluates the number and amounts of qualified investments that benefit the institution's AAs. 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>54</sup>

The CRA permits an insured depository institution to apply to its primary federal financial supervisor to be evaluated under a strategic plan.<sup>55</sup> The CRA

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<sup>52</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>53</sup> See 12 CFR 228.22(b).

<sup>54</sup> See 12 CFR part 228, subpart B.

<sup>55</sup> See, e.g., 12 CFR 228.21(a)(4) & 228.27. Under the federal financial supervisory agencies' CRA regulations, the appropriate federal financial supervisory agency will assess an institution's CRA performance under a strategic plan if, among other things, the

performance of such an institution is assessed by evaluating the institution's record of meeting the credit needs of its AAs under its strategic plan.<sup>56</sup> This evaluation involves an assessment of the institution's performance under the lending, investment, and service goals outlined in its strategic plan.<sup>57</sup> As discussed below, the OCC, in part, evaluated Union Bank's CRA performance under a strategic plan.<sup>58</sup>

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial, ethnic, or gender groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions may not be available from public HMDA data.<sup>59</sup> Consequently, the Board requests additional information not available to the public that may be needed from the institution and evaluates disparities in the context of the additional information obtained regarding the lending and compliance record of an institution.

#### *CRA Performance of U.S. Bank*

U.S. Bank was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the OCC, as of October 16, 2017 ("U.S. Bank

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institution invites public comment on the plan and the plan is approved by the relevant supervisor. See, e.g., 12 CFR 228.27.

<sup>56</sup> See, e.g., 12 CFR 228.27.

<sup>57</sup> Id.

<sup>58</sup> The OCC approved Union Bank's strategic plan under 12 CFR 25.27.

<sup>59</sup> When conducting fair lending examinations, examiners analyze additional information not available to the public, such as credit scores, before reaching a determination regarding an institution's compliance with fair lending laws.



Evaluation”).<sup>60</sup> The bank received “Outstanding” ratings for the Lending, Investment, and Service Tests.

### *Lending Test*

Examiners found that U.S. Bank’s overall lending levels were good to excellent in most of the bank’s AAs. According to examiners, a majority of the reported loans made by U.S. Bank were made in its AAs. Examiners noted that U.S. Bank used flexible lending programs to serve credit needs. Examiners identified U.S. Bank as a provider of a wide variety of lending products and programs that supported affordable housing and economic development, including over 65 affordable mortgage products. Examiners also found that the bank’s community development lending activities had a

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<sup>60</sup> The U.S. Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home mortgage loan data, small loan to business data, and small loan to farm data from January 1, 2012, through December 31, 2015, and community development activity data from April 1, 2012, through December 31, 2015.

The U.S. Bank Evaluation covered U.S. Bank’s 268 AAs (reduced to 178 AAs after nonmetropolitan AAs were combined into a single nonmetropolitan AA per state for purposes of the analysis) located in 26 states and 14 multistate metropolitan statistical areas (“MMSAs”): Arizona; Arkansas; California; Colorado; Florida; Idaho; Illinois; Indiana; Iowa; Kansas; Kentucky; Minnesota; Missouri; Montana; Nebraska; Nevada; New Mexico; North Dakota; Ohio; Oregon; South Dakota; Tennessee; Utah; Washington; Wisconsin; Wyoming; the Chicago–Naperville–Elgin, Illinois–Indiana–Wisconsin, MMSA; the Cincinnati, Ohio–Kentucky–Indiana, MMSA; the Clarksville, Tennessee–Kentucky, MMSA; the Davenport–Moline–Rock Island, Iowa–Illinois, MMSA; the Fargo, North Dakota–Minnesota, MMSA; the Grand Forks, North Dakota–Minnesota, MMSA; the Kansas City, Missouri–Kansas, MMSA; the Lewiston, Idaho–Washington, MMSA; the Logan, Utah–Idaho, MMSA; the Louisville–Jefferson County, Kentucky–Indiana, MMSA; the Minneapolis–St. Paul–Bloomington, Minnesota–Wisconsin, MMSA; the Omaha–Council Bluffs, Nebraska–Iowa, MMSA; the Portland–Vancouver–Hillsboro, Oregon–Washington, MMSA; and the St. Louis, Missouri–Illinois, MMSA. The U.S. Bank Evaluation included a full-scope review of 44 of these AAs, including all 26 states and all 14 MMSAs (“full-scope AAs”). A limited-scope review was conducted of the remaining 134 AAs (“limited-scope AAs”).

significantly positive impact on the bank’s lending performance in most AAs subject to full-scope examination.

*Areas of Concern to Commenters*— In California, U.S. Bank received an overall “Outstanding” rating for the Lending Test. Examiners found that the bank exhibited excellent lending performance in the full-scope AAs<sup>61</sup> based on good overall borrower distributions, good overall geographic distributions, and at least adequate levels of lending activity. In the Los Angeles AA, examiners noted that the bank’s level of lending activity was excellent. Examiners found that the significant positive impact of the bank’s community development lending in California, including the Los Angeles AA, elevated otherwise good lending performance to excellent. Examiners also found that an excellent level of flexible lending in the state further supported the bank’s lending performance and noted that performance differences in the limited-scope AAs did not impact the bank’s overall Lending Test rating for California. For instance, in the limited-scope San Francisco-Redwood City-South San Francisco AA (“San Francisco AA”), examiners noted that the bank’s lending performance was excellent and consistent with U.S. Bank’s lending performance generally.

In Florida, U.S. Bank received an overall “High Satisfactory” rating for the Lending Test. In the full-scope West Palm Beach AA,<sup>62</sup> examiners found that the bank’s lending performance was good based on adequate borrower distributions, good geographic distributions, and an excellent level of lending activity. Examiners noted that

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<sup>61</sup> Examiners conducted full scope reviews in California in the Los Angeles and Sacramento AAs. The Los Angeles AA consisted of the entire Los Angeles–Long Beach–Glendale, California metropolitan division (“MD”). The Sacramento AA consisted of the entire Sacramento–Arden-Arcade–Roseville, California, Metropolitan Statistical Area (“MSA”).

<sup>62</sup> The West Palm Beach AA consists of the entire West Palm Beach–Boca Raton–Delray Beach, Florida, MD.

a low level of community development lending was countered by the positive impact of the bank's flexible lending products to serve AA credit needs.

#### *Investment Test*

Examiners found that U.S. Bank's overall investment performance was excellent. Examiners noted that U.S. Bank's investments, which focused on affordable housing and revitalization and stabilization initiatives, were responsive to community development needs. Examiners also noted that the bank was a consistent leader in investing through tax credit programs.

*Areas of Concern to Commenters*—In California, U.S. Bank received an overall "Outstanding" rating for the Investment Test. Examiners noted that the bank exhibited excellent investment performance in the Los Angeles and Sacramento AAs based on investment activity and responsiveness to identified community development needs. In the Los Angeles AA, examiners found that U.S. Bank demonstrated an excellent level of investment activity. Examiners also found that the bank's investments were particularly responsive to an identified community development need for affordable rental housing in this AA. Examiners noted that there were no performance differences in the limited-scope AAs, including the San Francisco AA, and that investment performance was excellent in these AAs.

In Florida, U.S. Bank received an overall "Outstanding" rating for the Investment Test. In the West Palm Beach AA, examiners noted that the bank's investment performance was excellent, and the bank was responsive to community development investment needs and opportunities in the AA.

#### *Service Test*

Examiners found that U.S. Bank's retail delivery systems were readily accessible in a majority of the full-scope AAs. Examiners noted that, in several of these AAs, retail access was enhanced by branches in middle- and upper-income ("MUI") tracts that were in close proximity (across the street or within blocks) to LMI areas. Examiners did not identify any branch differences in the full-scope AAs related to product availability, services offered, or business hours that inconvenienced LMI

geographies or individuals, and the level of community development service activities were considered good to excellent in most of the bank's full-scope AAs.

*Areas of Concern to Commenters*—In California, U.S. Bank received an overall “High Satisfactory” rating for the Service Test. Examiners noted the bank's good overall service performance in the Los Angeles and Sacramento AAs was based on accessible retail delivery systems (with consideration of MUI branches in close proximity to LMI geographies) and at least good community development service performance. In the Los Angeles AA, examiners found that U.S. Bank's retail delivery systems were accessible to geographies and individuals of different income levels. Examiners noted that discretionary branching activity had not adversely affected LMI access to banking services. Examiners found that the services and business hours provided by the bank were tailored to the convenience and needs of the Los Angeles AA. In addition, examiners noted that the bank's community development service performance in the Los Angeles AA was excellent, based on the bank's high level of services provided, strong leadership, and responsiveness to an identified community need for general financial education and small business technical assistance. Examiners also noted that performance differences in the limited-scope areas did not affect the overall state rating. Specifically, in the San Francisco AA, examiners found U.S. Bank's service performance was good and consistent with the bank's overall performance.

In Florida, U.S. Bank received an overall rating of “Satisfactory.” Examiners found that the bank's retail delivery systems were reasonably accessible relative to the bank's operational strategy in Florida. Examiners noted that the bank's performance in the West Palm Beach AA was adequate, and there were no performance differences in the limited-scope AA.

*U.S. Bank's Efforts Since the U.S. Bank Evaluation*

USB represents that, since the U.S. Bank Evaluation, U.S. Bank has continued to meet its internal CRA goals. USB notes that it has a comprehensive program intended to ensure that U.S. Bank maintains its high standards and strong CRA performance. USB asserts that, from 2016 through 2020, U.S. Bank continued to

originate community development and CRA-eligible small business and small farm loans, make community development investments, and provide grants, donations, and sponsorships to a number of community programs, including LMI services, economic development, and affordable housing organizations.

*CRA Performance of Union Bank*

Union Bank was assigned an overall rating of “Outstanding” at its most recent CRA performance evaluation by the OCC, as of July 8, 2019 (“Union Bank Evaluation”).<sup>63</sup> The bank received “Outstanding” ratings for the Lending and Investment Tests, and a “High Satisfactory” rating for the Service Test.

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<sup>63</sup> The OCC evaluated Union Bank’s branches in California, Oregon, and Washington that predominately were engaged in retail business (“retail branch states”) under the CRA Interagency Large Institution Examination Procedures for the full evaluation period of January 1, 2015 through December 28, 2018. The OCC evaluated Union Bank’s branches in Georgia, Illinois, New York, and Texas that predominately were engaged in commercial business (“commercial branch states”) under the CRA Interagency Large Institution Examination Procedures for 2015 and 2016 and under CRA Strategic Plan Evaluation Procedures for 2017 and 2018. The OCC blended the bank’s performance under the Large Bank Evaluation and the Strategic Plan Evaluation to arrive at the overall CRA rating.

For the retail branch states, the OCC reviewed HMDA-reportable loan (home purchase, home improvement, and home refinance) data, community development loan data, small loans to business data, and small loans to farm data for the calendar years 2015 to 2018. Examiners reviewed community development lending, investment, and service activities for the calendar years 2015 to 2018 for the retail branch states and the period of January 1, 2015, to February 28, 2017, for the retail portion of the commercial branch states. In evaluating the bank’s performance under the Strategic Plan, the OCC reviewed community development lending and community development investment activities from March 1, 2017, through December 31, 2018.

The Union Bank Evaluation covered seven states: California, Georgia, Illinois, New York, Oregon, Texas, and Washington. Union Bank’s 33 AAs included: Los Angeles–Long Beach–Anaheim MSA; Sacramento–Roseville–Arden-Arcade MSA; San Diego–Carlsbad MSA; San Francisco–Oakland–Hayward MSA; Bakersfield MSA; El Centro MSA; Fresno MSA; Hanford–Corcoran MSA; Madera MSA; Modesto MSA; Oxnard–Thousand Oaks–Ventura MSA; Redding MSA; Riverside–

### *Lending Test*

Examiners found that Union Bank originated or purchased nearly all its loans within the bank's AAs, with excellent geographic distribution of home mortgage and small business loan originations and purchases across all states. Examiners noted that the bank was a leader in making community development loans, and the bank exhibited good responsiveness to credit and community economic development needs.

*Areas of Concern to Commenters*—In Oregon, Union Bank received an overall “Outstanding” rating for the Lending Test. Examiners found that the overall geographic distribution and borrower distribution of the bank's home mortgage and small business loan originations and purchases were good. In addition, examiners noted that the bank's community development loans were effective in addressing community credit needs and that the bank was a leader in originating community loans, which had a significant positive effect on the Lending Test rating.

### *Investment Test*

With respect to the Investment Test, examiners found that Union Bank had an excellent level of qualified community development investments and grants, particularly those that are not routinely provided by private investors, often with the bank in a leadership position. Examiners also noted that the bank exhibited good responsiveness to credit and community economic development needs, including significant use of innovative and complex investments to support community

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San Bernardino–Ontario MSA; Salinas MSA; San Jose–Sunnyvale–Santa Clara MSA; San Luis Obispo–Paso Robles–Arroyo Grande MSA; Santa Cruz–Watsonville MSA; Santa Maria–Santa Barbara MSA; Santa Rosa MSA; Stockton–Lodi MSA; Vallejo–Fairfield; Visalia–Porterville MSA; Yuba City MSA; California Non-MSA; Atlanta–Sandy Springs–Roswell MSA (Partial); Chicago–Naperville–Arlington Heights MSA; New York–Jersey City–White Plains, New York Partial MSA; Portland–Vancouver–Hillsboro MSA (Partial); Salem MSA; Dallas–Plano–Irving MSA; Houston–The Woodlands–Sugar Land MSA; Seattle–Tacoma–Bellevue, Washington MSA; and Bremerton–Silverdale, Washington MSA. The Union Bank Evaluation included a full-scope review of 11 of these AAs. A limited-scope review was conducted of the remaining 22 AAs (“limited-scope AAs”).

development initiatives. In addition, examiners identified the bank as a leader in financing affordable housing projects, including construction, take-out, and LIHTC investments.

*Areas of Concern to Commenters*—In Oregon, Union Bank received an overall “High Satisfactory” rating for the Investment Test. Examiners noted that the number of investments in Oregon doubled over the prior CRA performance evaluation period; however, the dollar amount decreased substantially from the prior period but did not affect the overall assessment for Oregon.

*Service Test*

With respect to the Service Test, examiners found that Union Bank’s retail banking services were accessible to geographies and individuals of different income levels within the AAs.

*Areas of Concern to Commenters*—In Oregon, Union Bank received an overall “Satisfactory” rating for the Service Test. Examiners found that the bank’s performance was adequate, considering the good performance in community development services, and noted that performance in the limited-scope AAs had a neutral influence on the state rating. Examiners found that the bank’s service delivery systems were unreasonably inaccessible to geographies and individuals of different income levels in the bank’s AAs. Nevertheless, examiners noted that services, including where appropriate, business hours, did not vary in a way that inconvenienced LMI geographies and/or individuals.

*Additional Supervisory Views*

In its review of the proposal, the Board consulted with the OCC regarding the records of CRA performance of U.S. Bank and Union Bank and consulted with the OCC and the CFPB regarding the consumer compliance and fair lending records of both banks. The Board also considered the results of the most recent consumer compliance examinations of U.S. Bank and Union Bank, which included reviews of the banks’ compliance management programs and compliance with consumer protection laws and regulations.

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

*Recent Enforcement Action*

On July 28, 2022, the CFPB issued a consent order<sup>64</sup> against U.S. Bank under sections 1053 and 1055 of the Consumer Financial Protection Act of 2010<sup>65</sup> (“CFPB Consent Order”), based on findings that U.S. Bank engaged in acts or practices in violation of Federal consumer financial laws.<sup>66</sup> The conduct addressed in the CFPB Consent Order related to U.S. Bank sales practices that the CFPB concluded led employees to open credit cards, lines of credit, and deposit accounts without consumers’ knowledge and consent, and U.S. Bank’s using or obtaining consumer reports of consumers where it had no permissible purpose. The CFPB Consent Order states that the acts or practices affected a small percentage of accounts during the CFPB’s review period, from 2010 through 2020. The CFPB Consent Order also states that U.S. Bank implemented corrective actions beginning in 2016, after which the number of accounts bearing indicia of non-authorization trended downward.

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<sup>64</sup> Consent Order between U.S. Bank National Association and Consumer Financial Protection Bureau, File No. 2022-CFPB-0006 (July 28, 2022), <https://www.consumerfinance.gov/enforcement/actions/us-bank-national-association/>.

<sup>65</sup> 12 U.S.C. §§ 5563 and 5565.

<sup>66</sup> Specifically, the CFPB found that U.S. Bank violated the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and its implementing regulation, Regulation Z, 12 CFR part 1026; the Fair Credit Reporting Act, 15 U.S.C. § 1681b(f); the Truth in Savings Act, 12 U.S.C. § 4301 *et seq.*, and its implementing regulation, Regulation DD, 12 CFR part 1030; and sections 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531 and 5536. U.S. Bank agreed to the issuance of the CFPB Consent Order without admitting any wrongdoing.



Among other requirements, the CFPB Consent Order requires U.S. Bank to pay a civil money penalty of \$37.5 million to the CFPB and to develop a plan for providing redress to affected consumers. The CFPB Consent Order also requires U.S. Bank to maintain policies and procedures to prevent and detect improper sales acts or practices.

The Board consulted with the OCC and the CFPB regarding the consumer compliance record of U.S. Bank, including the bank's sales practices. In addition, the OCC has approved the merger of U.S. Bank with Union Bank on October 14, 2022.

#### *Branch Closures*

The Board considers the impact of expected 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. 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. Federal banking law also provides a specific mechanism for addressing branch closings, including requiring that a bank provide notice to the public and the appropriate federal supervisory agency before a branch is closed.<sup>67</sup> 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>68</sup>

USB represents its evaluation of possible branch closures is subject to completion of the transaction. USB states that it is reevaluating U.S. Bank's physical footprint in light of customers' increasing preference for online banking and represents

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<sup>67</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>68</sup> See, e.g., 12 CFR 228.24(d)(2). The OCC, as the primary federal supervisor of U.S. Bank, would review branch closures in evaluating the CRA performance of the combined organization.

that it continues efforts to receive input from community groups to inform its branch decision analysis.

Many commenters expressed concern that branch closures could adversely affect communities served by U.S. Bank and Union Bank, particularly in LMI and minority communities, as well as in California communities, specifically Central California and the San Joaquin Valley. Some of these commenters expressed concern that branch consolidation could negatively impact consumer access, borrowing costs, small business lending, and mortgage lending following the merger. The commenters also alleged U.S. Bank has closed more branches than its peers both in California and nationally from 2017 through 2020, and that U.S. Bank closed more branches than its peers during the pandemic.

USB represents that U.S. Bank would open five new branches in LMI or middle-income majority-minority communities in California and plans to open or preserve five additional branches in those communities, all within the next five years. USB states that following the proposed transaction, U.S. Bank would retain a branch presence in every market that Union Bank currently serves in California, Oregon, and Washington. USB represents that, prior to closing branches in LMI areas, U.S. Bank would analyze the demographics of the neighborhood, consider community input, and consider alternatives to closure as well as alternative delivery options to minimize the impact of the closure. USB asserts any branch closures or consolidations would be conducted in accordance with federal law, OCC guidance, and U.S. Bank's branch closing policies. USB represents that, in accordance with internal policies, U.S. Bank would conduct CRA and other risk reviews prior to making decisions regarding branch closures in LMI census tracts and census tracts designated as nonmetropolitan distressed or underserved, as well as for any closure that would result in a significant CRA-related community impact. Additionally, USB represents that U.S. Bank would consider the potential impact of branching activities on the bank's compliance with fair lending laws and regulations.

In response to comments regarding prior branch closures, USB asserts that when assessed nationally and over a longer time period, the number of branch closures by U.S. Bank generally has been consistent with the number of closures by competitors over the same period. USB also asserts that the majority of U.S. Bank's branch closures in California were of branches located within grocery stores or other retailers, most of which were located nearby traditional branches. As noted, USB represents U.S. Bank is committed to maintaining a physical presence, particularly in LMI communities, in every market Union Bank currently serves in California, Oregon, and Washington.

In the U.S. Bank Evaluation, examiners found that U.S. Bank's opening and closing of branches had not adversely affected access to banking services and in some areas improved LMI access to banking services. In the Union Bank Evaluation, examiners found that Union Bank's service delivery systems were accessible to geographies and individuals of different income levels in the bank's AAs. However, examiners noted that Union Bank's branch closing activities adversely affected the accessibility of its delivery systems, particularly in LMI geographies and/or to LMI individuals in the Los Angeles, San Francisco, Seattle, and Bremerton AAs. The Board has consulted with the OCC regarding U.S. Bank's post-consummation branching plans.

The Board has considered all the facts of record relating to branch closures, consolidations, and relocations, including the records of the relevant depository institutions under the CRA and fair lending laws in relation to branch closures; the institutions' policies and procedures on and records of compliance with federal banking law regarding branch closures; the views of the OCC; confidential supervisory information; information provided by USB; and public comments on the proposal. Based on that review, the Board concludes that U.S. Bank has established policies, programs, and procedures designed to ensure the bank's branching network is consistent with the bank's CRA and fair lending obligations and to mitigate the impact of any branch closures on communities to be served by the combined bank.

*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. USB represents that the business and core competencies of U.S. Bank and Union Bank are highly complementary and that customers of and communities served by the banks would substantially benefit from access to a wider variety of banking products and services. USB also represents that the combined organization's greater capital resources would enable the organization to provide expanded banking services to customers and communities to be served on a safe and sound basis and that the much greater scale of the combined organization would allow it to invest in technology to provide a more customized customer experience. USB asserts that consummation of the proposal would significantly enlarge and diversify the geographic footprint of each bank, which would enable the combined organization to compete for top talent across the combined organization's footprint and provide current customers of each bank access to an expanded network of branches and ATMs.

USB represents that it does not expect the combined organization to make any material reductions in the categories of products or services currently offered by U.S. Bank or Union Bank or to increase materially the fees currently charged by the banks to their customers following consummation of the proposal. USB represents that several products and services not currently offered by Union Bank would be made available by the combined bank and would help to meet the needs of LMI customers, including the small-dollar U.S. Bank Simple Loan product; the American Dream Home Loan Program, a home loan program for LMI borrowers; the U.S. Bank Safe Debit product, which offers accounts with low minimum opening deposits and does not charge customers overdraft or non-sufficient funds ("NSF") fees; and a customer checking solution without NSF fees. USB represents the combined bank would expand upon each bank's community development activities. USB represents it expects to continue Union Bank's community development programs that do not have U.S. Bank corollaries, including its high school and junior college student-run branch program. USB represents that it plans to continue and expand U.S. Bank's Business Diversity Lending program, a special purpose credit

program designed to encourage applications from and to make small business loans to women-, minority-, and veteran-owned businesses, to be available in the markets USB serves across the country. USB also represents that it plans to increase LIHTC investments and expects its direct equity investment platform will provide Union Bank customers with an improved community development lending platform to access direct tax credit equity for their affordable housing projects, as compared to Union Bank's current community development lending platform.

*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 USB, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board determines that 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."<sup>69</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 combined organization and the incremental effect of the transaction on the systemic footprint of the acquiring bank holding company. 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

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<sup>69</sup> 12 U.S.C. § 1842(c)(7).

complexity of the financial system, and the extent of the cross-border activities of the combined organization.<sup>70</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 opacity 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 on the broader economy.<sup>71</sup>

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, comments received from the public, data compiled through the supervisory process, and data obtained through information requests to the institutions involved in the proposal, as well as qualitative information.

*Size.* An organization’s size is one important indicator of the risk that the organization may pose to the U.S. banking or financial system. Congress has imposed specific size-based limitations on the amount of deposits and liabilities a banking organization may control.<sup>72</sup> In addition, section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act,<sup>73</sup> requires the Board to apply

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<sup>70</sup> Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

<sup>71</sup> For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order No. 2012-2 (February 14, 2012).

USB currently is a triennial full filer under the resolution plan rule, 12 CFR parts 243 and 381, and the firm is scheduled to file its next full resolution plan in July 2024. USB has committed to the Board that it will, no later than the date that is six months after the date of consummation of the proposal, provide the Board and FDIC with an interim update to its resolution plan.

<sup>72</sup> 12 U.S.C. §§ 1842(d)(2)(A) and 1852 (imposing a 10 percent nationwide deposit limit and a 10 percent nationwide liabilities limit on potential combinations by banking organizations).

<sup>73</sup> Pub. L. No. 115-174, 132 Stat. 1296 (2018).

enhanced prudential standards to bank holding companies with \$250 billion or more in total consolidated assets.<sup>74</sup> Size also is among the factors that the Board must take into consideration in differentiating among banking organizations under section 165.<sup>75</sup>

In this case, the Board has considered measures of the combined organization's size relative to the U.S. financial system, including the combined organization's consolidated assets, consolidated liabilities,<sup>76</sup> total exposures, and U.S. deposits. As a result of the proposed acquisition, the combined organization would become the seventh largest U.S. financial institution<sup>77</sup> based on total assets. Its total exposures would account for 2.9 percent of the total for institutions that file the FR Y-15 form.<sup>78</sup> Based on deposits, the combined organization would remain the fifth largest U.S. financial institution, with 3.5 percent of the total deposits of FR Y-15 filing

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<sup>74</sup> See 12 U.S.C. § 5365.

<sup>75</sup> See 12 U.S.C. § 5365(a)(2)(A). The Board has previously used size as a simple measure of a banking organization's potential systemic impact and risk and has differentiated the stringency of capital and liquidity requirements based on total consolidated asset size.

<sup>76</sup> The Board has considered both consolidated liabilities on the combined organization's pro forma balance sheet and liabilities as computed under the limitations on consolidated liabilities in section 622 of the Dodd-Frank Act. See 12 U.S.C. § 1852.

<sup>77</sup> In this context, a U.S. financial institution includes all insured depository institutions, insured depository institution holding companies, nonbank financial companies supervised by the Board under Title I of the Dodd-Frank Act, and any foreign bank or company treated as a bank holding company. See 12 U.S.C. § 1852(a)(2).

<sup>78</sup> The FR Y-15 form collects data on systemic importance indicators, including total exposures, which the Board used in its assessment of the financial stability implications of the proposal. For this reason, this Order often discusses the financial stability metrics of the combined organization relative to institutions that file the FR Y-15 form. The panel of institutions that file the FR Y-15 form consists of U.S. bank holding companies and covered savings and loan holding companies with total consolidated assets of \$100 billion or more; foreign banking organizations ("FBOs") with combined U.S. assets of \$100 billion or more, including, if applicable, any U.S. intermediate holding company ("IHC") of the FBO regardless of the size of the IHC; and U.S.-based organizations designated as Global Systemically Important Banks ("G-SIBs") that do not otherwise meet the consolidated assets threshold. FR Y-15 data are as of June 30, 2022.

firms. These measures suggest that, although the combined organization would be large on an absolute basis, its shares of U.S. financial system assets, liabilities, total exposures, and deposits would remain moderate, and its shares of national deposits and liabilities would fall well below the 10 percent limitations set by Congress.

Although the proposed transaction would increase USB's size, the combined organization's larger size must be viewed in conjunction with other metrics. Accordingly, the Board has considered other factors, both individually and in combination with size, to evaluate the likely impact of this transaction on the stability of the U.S. banking or financial system.<sup>79</sup>

*Substitutability.* The Board has considered whether USB or Union Bank engage in any activities that are critical to the functioning of the U.S. financial system and whether there would be adequate substitute providers that could quickly perform such activities should the combined organization suddenly be unable to do so as a result of severe financial distress. The Board primarily evaluated the roles of USB and Union Bank in payments activities, assets under custody activities, and underwriting activities. Neither USB nor Union Bank is a major provider of these services. The combined organization would account for approximately 0.8 percent of payments activities, 1.5 percent of assets under custody, and 0.9 percent of underwriting activities of the total reported by institutions that file the FR Y-15 form. For most of these activities, the combined organization would have a small share on a nationwide basis, and numerous competitors would remain.

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<sup>79</sup> In addition, the Board also considered the G-SIB method 1 score of the combined organization. The G-SIB method 1 score is a measure of an institution's systemic importance and is a weighted sum of an institution's indicators of size, interconnectedness, complexity, cross-jurisdictional activity, and substitutability. See 80 Fed. Reg. 49082 (August 14, 2015). On consummation of the proposal, the combined organization would have a G-SIB method 1 score of 60 points, well below the threshold (130 basis points) that identifies a financial institution as a G-SIB. Finally, this score is close to USB's current method 1 score, indicating that the transaction would not increase materially USB's systemic importance.



*Interconnectedness.* The Board has reviewed data to determine whether financial distress experienced by the combined organization could create financial instability by being transmitted to any other institutions or markets within the U.S. banking or financial system. Specifically, the Board considered measures of interconnectedness between the combined organization and the rest of the financial system during financial distress, such as potential direct losses to counterparties, asset-price declines due to fire sales, and contagion effects.

USB and Union Bank do not engage in business activities or participate in markets to a degree that would pose significant risk to other institutions in the event of financial distress of the combined organization. The dollar amount of short-term wholesale funding would be approximately 1.3 percent of the total for FR Y-15 filers. The combined organization's shares of U.S. financial system intra-financial system assets and liabilities would also be less than 2.0 percent of the total for FR Y-15 filers.

*Complexity.* The Board has considered the extent to which the combined organization would contribute to the overall complexity of the U.S. banking or financial system. In this analysis, the Board considered USB's and Union Bank's over-the-counter derivatives exposures ("OTC derivatives"), holdings of Level 3 assets,<sup>80</sup> and volume of trading book and available-for-sale securities. The combined organization's level of notional OTC derivatives exposures would represent less than 1 percent of the total for institutions that file the FR Y-15 form. The combined organization's Level 3 assets represent 3.50 percent of the total for the same group of institutions. Finally, the combined organization's amount of trading and available-for-sale securities would account for approximately 2.1 percent of the total for that group as well.

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<sup>80</sup> Level 3 assets are defined in the Statement of Financial Accounting Standards No. 157 ("Fair Value Measurements") as assets whose accounting valuations are derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable. These assets are deemed complex to evaluate and cannot be measured at fair value because there is not a clear market price or a standard valuation model. A higher share of these assets could lead to disorderly resolution of an entity in case of failure.

The Board also has considered whether the complexity of the combined organization's assets and liabilities would hinder the organization's timely and efficient resolution in the event the organization were to experience financial distress. USB and Union Bank do not engage in complex activities, such as being a core clearing and settlement organization for critical financial markets, that might complicate the resolution process by increasing the complexity, costs, or timeframes involved in a resolution. Also, USB would not acquire any foreign institution as part of the proposal. Under the circumstances, resolving the combined organization would not appear to involve a level of cost, time, or difficulty such that it would cause a significant increase in risk to the stability of the U.S. banking or financial system.

*Cross-Border Activity.* The Board has reviewed the cross-border activities of USB and Union Bank to determine whether the cross-border presence of the combined organization would create difficulties in coordinating any resolution, which could significantly increase the risk to stability of the U.S. banking or financial system. At consummation, the combined organization would engage in limited activities outside the United States. In particular, the combined organization would account for less than 1.0 percent of either total cross-border claims or total cross-border liabilities of institutions filing the FR Y-15.

*Financial Stability Factors in Combination.* The Board has assessed the foregoing factors individually and in combination to determine whether interactions among them might mitigate or exacerbate risks suggested by looking at them individually. The Board also has considered whether the proposed transaction would provide any stability benefits and whether prudential standards applicable to the combined organization would offset any potential risks.<sup>81</sup>

For instance, concerns regarding the combined organization's size would be greater if USB or Union Bank also were highly interconnected to many different segments of the U.S. banking or financial system through counterparty relationships or

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<sup>81</sup> See 12 U.S.C. § 5365.

other channels or if the combined organization were to participate to a larger extent than USB or Union Bank does in short-term funding and capital markets. The Board's level of concern also would be greater if the structure and activities of the combined organization were sufficiently complex that, if the combined organization were to fail, it would be difficult to resolve the organization without causing significant disruptions to other financial institutions or markets.

As discussed, the combined organization would not be highly interconnected. Furthermore, the organizational structure and operations of the combined organization would be centered on a commercial banking business, and in the event of distress, the resolution process would be handled in a predictable manner by relevant authorities. The Board also has considered other measures that are suggestive of the degree of difficulty with which the combined organization could be resolved in the event of a failure, such as the organizational and legal complexity and cross-border activities of the combined organization. These measures suggest that the combined organization would be significantly less complicated to resolve than the largest U.S. financial institutions.

In addition, both USB and Union Bank are predominately engaged in banking relationships with individuals and nonfinancial institutions.<sup>82</sup> The combined 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 institution in the event of financial distress. In addition, the combined organization would not be a critical services provider or so interconnected with other institutions or the markets that it would pose significant risk to the financial system in the event of financial distress.<sup>83</sup>

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<sup>82</sup> USB and Union Bank offer a range of retail and commercial banking products and services. USB has, and as a result of the proposal would continue to have, a moderate market share in these products and services on a nationwide basis.

<sup>83</sup> Several commenters alleged that USB would be "too big to fail" without further detail.

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.

The Board had considered that consolidation among large banking organizations may pose resolvability and related financial stability concerns warranting further consideration. The Board expects to address questions of financial stability broadly through a rulemaking process.

### ***Conclusion***

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.<sup>84</sup> In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by USB with all the conditions imposed in this order and on any commitments made to the Board in connection with the proposal. The Board's approval also is conditioned on receipt by USB of all required regulatory approvals. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this order or later than three months thereafter, unless such period is

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<sup>84</sup> One commenter stated the Board's comment period should have been extended further. As noted above, the Board provided for a comment period of more than 145 days. During this time, the commenters submitted detailed comments in writing regarding the proposal. The Board's rules contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. The commenter did not identify circumstances that would warrant a further extension of the public comment period for this proposal. Accordingly, the Board has determined not to further extend the comment period.

extended for good cause by the Board or the Federal Reserve Bank of Minneapolis, acting under delegated authority.

By order of the Board of Governors,<sup>85</sup> effective October 14, 2022.

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

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<sup>85</sup> Voting for this action: Chair Powell, Vice Chair Brainard, Vice Chair for Supervision Barr, Governors Bowman, Waller, Cook and Jefferson.

## Appendix I

<i>Deposit Data in States where USB and Union Bank Both Have Banking Offices<sup>86</sup></i>									
State	USB			Union Bank			Merged Entity		
	Rank of Insured Depository Organization by Deposits <sup>87</sup>	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 Organization by Deposits	Deposits Controlled (in billions)	Percent of Total Deposits
Arizona	9th	\$3.6	1.79	8th	\$3.7	1.86	5th	\$7.3	3.65
California	10th	\$51.0	2.43	5th	\$97.5	4.65	4th	\$148.5	7.09
Oregon	1st	\$24.0	21.26	23rd	\$0.5	<1	1st	\$24.4	21.68
Washington	4th	\$21.8	9.69	14th	\$2.4	1.05	4th	\$24.2	10.76

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<sup>86</sup> State deposit ranking and deposit data are as of June 30, 2021, unless otherwise noted. State deposit ranking and deposit data do not reflect Union Bank’s contemplated sale of assets and transfer of liabilities to MUFG Bank Japan.

<sup>87</sup> In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

## Appendix II

<b>USB/Union Bank Banking Markets</b>						
<b>Consistent with Board Precedent and DOJ Bank Merger Guidelines</b>						
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. State deposit ranking and deposit data do not reflect Union Bank's contemplated sale of assets and transfer of liabilities to MUFG Bank Japan.						
<b>Phoenix, Arizona</b> — 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
<i>USB Pre-Consummation</i>	8	\$3.01 Billion	1.97	1,625	10	61
<i>Union Bank</i>	6	\$3.71 Billion	2.43			
<i>USB Post-Consummation</i>	5	\$6.71 Billion	4.39			
<b>Bakersfield, California</b> — Bakersfield metropolitan area in central Kern County						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>USB Pre-Consummation</i>	15	\$34.65 Million	0.33	1,494	3	17
<i>Union Bank</i>	6	\$462.58 Million	4.45			
<i>USB Post-Consummation</i>	6	\$497.23 Million	4.78			
<b>Davis, California</b> — Davis metropolitan area in Southeastern Yolo County						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>USB Pre-Consummation</i>	5	\$129.15 Million	4.99	2,142	41	7
<i>Union Bank</i>	6	\$107.40 Million	4.15			
<i>USB Post-Consummation</i>	5	\$236.55 Million	9.13			
<b>Hemet, California</b> — Hemet metropolitan area in western Riverside County						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>USB Pre-Consummation</i>	7	\$106.68 Million	4.55	1,780	26	8
<i>Union Bank</i>	9	\$66.44 Million	2.84			
<i>USB Post-Consummation</i>	5	\$173.12 Million	7.39			
<b>Hesperia-AppleValley-Victorville, California</b> — Hesperia-Apple Valley-Victorville metropolitan area in western San Bernardino County						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>USB Pre-Consummation</i>	4	\$447.36 Million	11.89	1,955	183	7
<i>Union Bank</i>	6	\$289.50 Million	7.70			
<i>USB Post-Consummation</i>	4	\$736.85 Million	19.59			
<b>Los Angeles, California</b> — 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
<i>USB Pre-Consummation</i>	9	\$17.25 Billion	2.21	939	31	113
<i>Union Bank</i>	4	\$54.66 Billion	7			
<i>USB Post-Consummation</i>	4	\$71.91 Billion	9.21			
<b>Modesto, California</b> — Modesto metropolitan area in Stanislaus County, the southeastern portion of San Joaquin County, and the northwestern portion of Merced County						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>USB Pre-Consummation</i>	11	\$335.60 Million	2.69	1,091	6	16
<i>Union Bank</i>	14	\$132.94 Million	1.07			
<i>USB Post-Consummation</i>	8	\$468.54 Million	3.75			
<b>Palm Springs-Cathedral City-Palm Desert, California</b> — Palm Springs-Cathedral City-Palm Desert and Indio-Coachella metropolitan areas in the central portion of Riverside County, west of Joshua Tree National Park, and the central southern portion of San Bernardino County						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>USB Pre-Consummation</i>	4	\$804.61 Million	7.17	1,286	55	19
<i>Union Bank</i>	8	\$430.36 Million	3.83			
<i>USB Post-Consummation</i>	4	\$1.23 Billion	11			
<b>Redding, California</b> — Redding metropolitan area in southwestern Shasta County						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>USB Pre-Consummation</i>	6	\$335.07 Million	7.84	1,428	26	13
<i>Union Bank</i>	10	\$70.40 Million	1.65			
<i>USB Post-Consummation</i>	5	\$405.47 Million	9.48			
<b>Riverside-San Bernardino, California</b> — Riverside-San Bernardino metropolitan area in western Riverside County and the southwestern portion of San Bernardino County						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>USB Pre-Consummation</i>	7	\$1.26 Billion	4.05	1,667	29	22
<i>Union Bank</i>	8	\$1.11 Billion	3.59			
<i>USB Post-Consummation</i>	4	\$2.37 Billion	7.64			
<b>Sacramento, California</b> — Sacramento metropolitan area in Sacramento and Placer Counties; the extreme eastern edge of Yolo County; and the southern portion of El Dorado County						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>USB Pre-Consummation</i>	2	\$12.67 Billion	19.27	1,563	201	38
<i>Union Bank</i>	5	\$3.43 Billion	5.22			
<i>USB Post-Consummation</i>	1	\$16.1 Billion	24.50			
<b>Salinas, California</b> — Salinas metropolitan area in Monterey County						



	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>USB Pre-Consummation</i>	10	\$46.65 Million	0.87	1,453	14	10
<i>Union Bank</i>	5	\$425.86 Million	7.91			
<i>USB Post-Consummation</i>	5	\$472.51 Million	8.77			
<b>San Diego, California</b> — San Diego metropolitan area in San Diego County						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>USB Pre-Consummation</i>	8	\$4.89 Billion	3.83	1,255	88	47
<i>Union Bank</i>	4	\$14.72 Billion	11.52			
<i>USB Post-Consummation</i>	3	\$19.61 Billion	15.34			
<b>San Luis Obispo, California</b> — San Luis Obispo metropolitan area San Luis Obispo County						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>USB Pre-Consummation</i>	11	\$164.24 Million	1.9	1,366	13	15
<i>Union Bank</i>	8	\$289.26 Million	3.34			
<i>USB Post-Consummation</i>	6	\$453.5 Million	5.24			
<b>Santa Barbara, California</b> — Santa Barbara metropolitan area in southern Santa Barbara County						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>USB Pre-Consummation</i>	17	\$41.1 Million	0.30	1,187	9	18
<i>Union Bank</i>	2	\$2.02 Billion	14.96			
<i>USB Post-Consummation</i>	2	\$2.06 Billion	15.26			
<b>Santa Cruz, California</b> — Santa Cruz metropolitan area in Santa Cruz County						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>USB Pre-Consummation</i>	8	\$170.21 Million	2.53	1,613	15	11
<i>Union Bank</i>	7	\$203.6 Million	3.03			
<i>USB Post-Consummation</i>	7	\$373.81 Million	5.56			
<b>Santa Maria, California</b> — Santa Maria metropolitan area in northern Santa Barbara County and southern San Luis Obispo County						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>USB Pre-Consummation</i>	11	\$23.11 Million	0.74	1,551	4	10
<i>Union Bank</i>	7	\$93.57 Million	3.01			
<i>USB Post-Consummation</i>	7	\$116.68 Million	3.75			
<b>Sonoma, California</b> — Southern Sonoma County outside of the Santa Rosa market						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors

<i>USB Pre-Consummation</i>	11	\$35.99 Million	2.57	1,329	35	10
<i>Union Bank</i>	6	\$95.37 Million	6.82			
<i>USB Post-Consummation</i>	6	\$131.36 Million	9.39			
<b>Stockton, California</b> — Stockton metropolitan area in San Joaquin County and the southern Sacramento County outside of the Sacramento market						
	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>USB Pre-Consummation</i>	12	\$132.64 Million	1.05	1,314	3	18
<i>Union Bank</i>	9	\$167.38 Million	1.32			
<i>USB Post-Consummation</i>	9	\$299.98 Million	2.37			
<b>Temecula, California</b> — Western Riverside County outside of the Hemet and Riverside-San Bernardino markets						
	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>USB Pre-Consummation</i>	4	\$508.45 Million	6.18	1,943	27	13
<i>Union Bank</i>	8	\$181.29 Million	2.20			
<i>USB Post-Consummation</i>	4	\$689.74 Million	8.38			
<b>Watsonville, California</b> — Watsonville metropolitan area in Santa Cruz County						
	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>USB Pre-Consummation</i>	8	\$15.76 Million	0.93	1,692	26	7
<i>Union Bank</i>	2	\$239.62 Million	14.08			
<i>USB Post-Consummation</i>	2	\$255.37 Million	15.01			
<b>Oxnard-Thousand Oaks-Ventura, California</b> — Oxnard-Thousand Oaks-Ventura metropolitan area in Ventura County and the extreme western tip of Los Angeles County						
	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>USB Pre-Consummation</i>	10	\$391.30 Million	1.58	1,604	13	21
<i>Union Bank</i>	5	\$1.03 Billion	4.16			
<i>USB Post-Consummation</i>	5	\$1.42 Billion	5.73			
<b>San Francisco-Oakland-San Jose, California</b> — San Francisco-Oakland-San Jose metropolitan area in Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara counties; the southern portions of Sonoma and Solano counties; the northern portion of San Benito County; and southern edge of Napa County						
	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>USB Pre-Consummation</i>	13	\$8.04 Billion	0.96	1,627	3	78
<i>Union Bank</i>	9	\$13.82 Billion	1.65			
<i>USB Post-Consummation</i>	8	\$21.86 Billion	2.61			
<b>Portland, Oregon-Washington</b> — Portland metropolitan area in Clackamas, Columbia, Marion, Multnomah, Washington, and Yamhill counties, all in Oregon, and Clark County, Washington						

	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>USB Pre-Consummation</i>	1	\$15.97 Billion	21.61	1,401	27	31
<i>Union Bank</i>	15	\$467.45 Million	0.63			
<i>USB Post-Consummation</i>	1	\$16.44 Billion	22.24			
<b>Seattle, Washington</b> — Seattle metropolitan area in King, Pierce, and Snohomish counties; the southeastern portion of Island County; and Bainbridge Island in Kitsap County						
	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>USB Pre-Consummation</i>	4	\$14.70 Billion	9.45	1,317	29	54
<i>Union Bank</i>	12	\$2.36 Billion	1.52			
<i>USB Post-Consummation</i>	4	\$17.06 Billion	10.97			