FRB Order No. 2015-22
August 31, 2015

FEDERAL RESERVE SYSTEM

Auburn State Bank
Auburn, Nebraska

Order Approving the Merger of Banks and the Establishment of a Branch

Auburn State Bank ("Auburn Bank"), Auburn, Nebraska, a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act[1] ("Bank Merger Act") to merge with The Carson National Bank of Auburn ("Carson Bank"), Auburn, Nebraska. In addition, Auburn Bank has applied under section 9 of the Federal Reserve Act ("FRA")[2] to establish and operate a branch at the location of Carson Bank's sole office.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board's Rules of Procedure.[3] The time for submitting comments has expired. Pursuant to the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General. The Board has considered the proposal and all comments received in light of the factors set forth in the Bank Merger Act and the FRA.

Auburn Bank and Carson Bank are under common control of the Grant family and have been since 1946.[4] Auburn Bank, with total assets of approximately

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[1] 12 U.S.C. § 1828(c).

[2] 12 U.S.C. § 321.

[3] 12 CFR 262.3(b).

[4] Three siblings, James W. Grant III, Mary Kathleen Green, and Carol Sue Schulte, and their respective children control more than 87 percent of the voting shares of Auburn Bank and more than 95 percent of the voting shares of Carson Bank. Members of the Grant family have controlled more than 25 percent of the voting shares of Auburn Bank since 1946, and more than 25 percent of the voting shares of Carson Bank since 1935.

$99.7 million, operates only in Nebraska. Auburn Bank is the 99th largest insured depository institution in Nebraska, controlling deposits of approximately $77.8 million, which represent less than 1 percent of the total amount of deposits in insured depository institutions in the state ("state deposits").[5]

Carson Bank, with total assets of approximately $71.8 million, operates only in Nebraska. Carson Bank is the 113th largest insured depository institution in Nebraska, controlling deposits of approximately $60.6 million, which represent less than 1 percent of the total amount of state deposits.

On consummation of the proposal, Auburn Bank would become the 61st largest insured depository institution in Nebraska, controlling deposits of approximately $138.4 million, representing less than 1 percent of the total amount of state deposits.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[6] The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[7]

Auburn Bank and Carson Bank compete in the Nemaha County banking market, which is defined as Nemaha County, Nebraska. In assessing the competitive effects of a proposed bank merger, the Board and the Department of Justice ("DOJ")

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[5] Asset data are as of December 31, 2014. Deposit data and state rankings are as of June 30, 2014. In this context, insured depository institutions include insured commercial banks, savings banks, and savings and loan associations.

[6] 12 U.S.C. § 1828(c)(5)(A).

[7] 12 U.S.C. § 1828(c)(5)(B).

review market shares and market concentration in banking markets in which the combined organization would operate after consummation of the proposal, as measured by the Herfindahl-Hirschman Index ("HHI"), under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines").[8] Under the DOJ Bank Merger Guidelines, affiliates are treated as a single entity. Under this analysis, a merger of affiliated banking institutions does not result in a change to the calculation of market share or market concentration as measured by the HHI.

In reviewing past proposals involving affiliated banking organizations, the Board generally has considered the competitive effects of a proposal at the time the banking organizations came under common control.[9] In reviewing past proposals, the Board has also considered whether the banking organizations became affiliated prior to 1950, when the Clayton Antitrust Act was first extended to bank mergers.[10] In those

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[8] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The DOJ has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that the DOJ 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.

[9] See, e.g., LBT Bancshares, Inc., 90 Federal Reserve Bulletin 485 (2004); Mid-Nebraska Bancshares, Inc., 64 Federal Reserve Bulletin 589 (1978), aff'd, 627 F.2d 266 (D.C. Cir. 1980); Mahaska Investment Co., 63 Federal Reserve Bulletin 579 (1977).

[10] The Clayton Antitrust Act was first applied to bank mergers with enactment of the Celler-Kefauver Antimerger Act of 1950. See Law of December 29, 1950, ch. 1184, 64 Stat. 1125-1126 (current version at 15 U.S.C. § 18) (subjecting mergers to scrutiny under the Clayton Antitrust Act). The laws were extended with enactment of the Bank Merger Act of 1960. See Bank Merger Act, Pub. L. No. 86-463, 74 Stat. 129 (1960) (requiring the Board to consider the competitive effects of proposed bank mergers).

cases, the Board has considered whether the banking organizations were small in absolute size at the time of the affiliation and other factors.[11]

In this case, Auburn Bank and Carson Bank have been affiliated for 69 years, well before the antitrust laws were applied to bank mergers and, to date, the affiliation has not been challenged under antitrust laws by federal or state authorities. At the time of the affiliation, the Clayton Antitrust Act did not extend to bank mergers, and neither the Bank Merger Act nor the Bank Holding Company Act, which both include antitrust provisions, had been enacted. Thus, the original affiliation did not represent an attempt to evade the antitrust laws or the Bank Merger Act. In 1946, Auburn Bank controlled approximately $2.2 million in deposits, while Carson Bank controlled approximately $2.9 million in deposits, which were both well below the mean size for all commercial banks in the United States at that time.[12]

The DOJ has conducted a review of the competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal. Based on all the facts of record, including the longstanding affiliation of Auburn Bank and Carson Bank, the fact that the affiliation was established prior to the application of the antitrust laws to bank mergers, the lack of any

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[11] See Victoria Bankshares, Inc., 70 Federal Reserve Bulletin 229, 230 (1984) ("Victoria Order"); Shickley State Company, 70 Federal Reserve Bulletin 360 (1984); First Monco Bancshares, Inc., 69 Federal Reserve Bulletin 293 (1983); Texas East BanCorp, 69 Federal Reserve Bulletin 636 (1983) ("Texas Order").

[12] At the time, the mean size for all commercial banks in the United States was $10.3 million. See, e.g., Victoria Order at 230 (institutions controlled $2.4 million and $1.4 million in deposits, respectively); Texas Order at 636 (institutions controlled $7.1 million and $1.9 million in deposits, respectively). At the time of their affiliation in 1946, Auburn Bank and Carson Bank were the two largest of five depository institutions in Nemeha County, with market shares of 31 and 41 percent, respectively, and a combined market share of 72 percent of deposits. Currently, Auburn Bank and Carson Bank control market shares of 33.7 percent and 26.3 percent, respectively, and the combined entity would control a market share of 60 percent of deposits.

previous challenge to the affiliation of Auburn Bank and Carson Bank on competitive grounds, and the small absolute size of both institutions, both at the time of their affiliation in 1946 and now, 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 Nemaha banking market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing this proposal under the Bank Merger Act, the Board has considered the financial and managerial resources and future prospects of the institutions involved. In its evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the pro forma organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. 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. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

Auburn Bank is well capitalized and would remain so on consummation of the proposal. Carson Bank would be merged into Auburn Bank. The asset quality, earnings, and liquidity of Auburn Bank are consistent with approval, and Auburn Bank appears to have adequate resources to absorb the costs of the proposal and to complete the integration of Auburn Bank's and Carson Bank's operations. Future prospects are considered consistent with approval. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of Auburn Bank and has reviewed the examination records of Auburn Bank, including assessments of its

management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences with Auburn Bank and the organization's record of compliance with applicable banking, consumer protection, and anti-money-laundering laws. The Board also has considered Auburn Bank's plans for implementing the proposal. Auburn Bank is considered to be well managed, and its board of directors and senior management have substantial banking experience. Auburn Bank would operate the acquired branch of Carson Bank under its existing policies and procedures, which are considered to be satisfactory. In addition, Auburn Bank's management has the experience and resources that should allow the combined organization to operate in a safe and sound manner.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of Auburn Bank, as well as the records of effectiveness of Auburn Bank and Carson Bank in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served. In its evaluation of the effect of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve and whether the proposal would result in public benefits. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[13] In addition, the Board considers the banks' overall compliance record, recent fair lending examinations, and other supervisory assessments; the supervisory views of examiners; and other supervisory information. The Board may also consider the acquiring institution's business model, its marketing and outreach plans, the

[13] 12 U.S.C. § 2901 et seq.

organization's plans following consummation, and any other information the Board deems relevant.

The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[14] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods.[15] In addition, 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 has considered all the facts of record, including reports of examination of CRA performance for Auburn Bank and Carson Bank, the fair lending and compliance records of both banks, confidential supervisory information, and information provided by Auburn Bank.

Record of Performance under the CRA

The Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[16] 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.[17] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a

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[14] 12 U.S.C. § 2901(b).

[15] 12 U.S.C. § 2903.

[16] See Interagency Questions and Answers Regarding Community Reinvestment, 75 Federal Register 11642, 11665 (2010).

[17] 12 U.S.C. § 2906.

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 the small bank lending test to evaluate the performance of a small insured depository institution in helping to meet the credit needs of the communities it serves. The institution's lending performance is based on the institution's loan-to-deposit ratio and other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, and qualified investments; the percentage of loans and other lending-related activities located in the institution's assessment areas; the institution's record of lending to and engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes; the geographic distribution of the institution's loans; and the institution's record of taking action in response to written complaints about its performance in helping to meet credit needs in its assessment areas. Consequently, the Board considers the CRA rating to be an important indicator, when taken into consideration with other factors, in determining whether a depository institution is helping to meet the credit needs of its communities.

CRA Performance of Auburn Bank

Auburn Bank was assigned an overall "Satisfactory" rating by the Federal Reserve Bank of Kansas City ("Reserve Bank") at its most recent CRA performance evaluation, as of April 9, 2012 ("Auburn Bank Evaluation").[18] Examiners found that Auburn Bank's loan-to-deposit ratio reflected a reasonable effort to extend credit, given the bank's size, financial condition, the competitive lending market, and the credit needs of the assessment area. Examiners concluded that the bank's lending within its

[18] The Auburn Bank Evaluation was conducted using the Small Institution CRA Examination Procedures. Examiners reviewed the bank's average loan-to-deposit ratio since the prior CRA examination dated February 4, 2008; a statistical sample of agricultural lending activity from September 2011 through March 2012; and a statistical sample of the bank's residential real estate lending activity from March 2011 through March 2012. The Auburn Bank Evaluation reviewed the bank's Nemaha County assessment area.

assessment area, including its distribution of lending to borrowers of different income levels and to farms of different revenue sizes, was reasonable. In evaluating Auburn Bank's performance, examiners found that Auburn Bank had a satisfactory record of meeting the credit needs of its assessment area, including those of low- and moderate-income families.

CRA Performance of Carson Bank

Carson Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency as of December 2, 2013 ("Carson Bank Evaluation").[19] Examiners found that Carson Bank's average loan-to-deposit ratio was reasonable given economic and demographic factors, and the bank originated a majority of its loans inside the assessment area. Examiners noted that Carson Bank's community development activities demonstrated good responsiveness to community development needs in its assessment area.

Additional Information on Convenience and Needs of Communities to be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. In this regard, Auburn Bank has represented that the proposal would provide customers of the combined organization with access to an expanded branch network and would offer additional products and services not currently offered to Carson customers. These products and services include internet bill pay, mobile banking, and remote deposit capture. Auburn Bank has also represented that customers of the combined organization would benefit from a higher legal lending limit following the merger.

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[19] The Carson Bank Evaluation was also conducted using the Small Institution CRA Examination Procedures. Examiners reviewed the bank's agricultural lending activity from May 27, 2008, through December 2, 2013. The Carson Bank Evaluation reviewed the bank's Nemaha County assessment area.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions involved under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, and information provided by Auburn Bank. Based on that review, the Board concludes that the proposal would result in public benefits and that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the Bank Merger Act to require the Board to consider a merger proposal's "risk to the stability of the United States banking or financial system."[20]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[21] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving

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[20] Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1828(c)(5).

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

the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[22]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Auburn Bank would have approximately $171.5 million in consolidated assets and would not be likely to pose systemic risks. The Board generally presumes that a proposal that involves an acquisition of less than $2 billion in assets, or that results in a firm with less than $25 billion in total consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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.

Establishment of a Branch

Auburn Bank has applied under section 9 of the FRA to establish a branch at the current location of Carson Bank,[23] and the Board has considered the factors it is required to consider when reviewing an application under that section.[24] Specifically, the Board has considered Auburn Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

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[22] For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order No. 2012-2 (Feb. 14, 2012).

[23] Carson Bank's main office and only location is 2301 Dahlke Avenue, Auburn, Nebraska 68305.

[24] 12 U.S.C. § 322; 12 CFR 208.6.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act and the FRA. Approval of the applications is specifically conditioned on compliance by Auburn Bank with all the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors,[25] effective August 31, 2015.

Margaret McCloskey Shanks (signed)
Margaret McCloskey Shanks
Deputy Secretary of the Board

[25] Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.