FRB Order No. 2017-37
December 18, 2017

FEDERAL RESERVE SYSTEM

NATCOM Bancshares, Inc.
Superior, Wisconsin

Order Approving the Acquisition of Shares of a Bank Holding Company

NATCOM Bancshares, Inc. ("Natcom"), Superior, Wisconsin, a bank holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] has requested the Board's approval under section 3 of the BHC Act[2] to acquire 49.0 percent of the voting shares of Republic Bancshares, Inc. ("Republic"), and thereby indirectly acquire control of Republic Bank, Inc. ("Republic Bank"), both of Duluth, Minnesota.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 Federal Register 50128 (October 30, 2017)).[4] The time for submitting comments has expired, and the Board has considered the

[1] 12 U.S.C. § 1841 et seq.

[2] 12 U.S.C. § 1842.

[3] The BHC Act contemplates that a bank holding company may seek to acquire less than a majority interest in another bank holding company or bank. See 12 U.S.C. § 1842(a)(3). On this basis, the Board previously has approved the acquisition by a bank holding company of less than a majority interest. See, e.g., C-B-G, Inc., 93 Federal Reserve Bulletin C88 (2007) (approving the acquisition of up to 35 percent of a bank holding company); Juniata Valley Financial Corp., 92 Federal Reserve Bulletin C171 (2006) (approving the acquisition of up to 39.2 percent of a bank). The Board notes, however, that the BHC Act requires Natcom to receive the Board's approval before directly or indirectly acquiring any additional shares of Republic or Republic Bank. See 12 U.S.C. § 1842(a)(3).

[4] 12 CFR 262.3(b).

proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Natcom is the 1227th largest insured depository organization in the United States by total assets.[5] Natcom controls approximately $493.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[6] Natcom controls National Bank of Commerce, Superior, Wisconsin, with assets of $610.0 million, which operates in Minnesota and Wisconsin. Natcom is the 168th largest insured depository institution in Minnesota, controlling deposits of approximately $89.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[7]

Republic is the 1751st largest insured depository organization in the United States by total assets. Republic controls approximately $305.4 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Republic Bank, with assets of $398.5 million, operates in Minnesota. Republic is the 56th largest insured depository institution in Minnesota, controlling deposits of approximately $290.6 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Management of Republic and Republic Bank opposes Natcom's proposal and submitted comments to the Board urging denial on several grounds. The Board previously has stated, in evaluating acquisition proposals, that it must apply the criteria in the BHC Act in the same manner to all proposals, whether they are supported or opposed

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[5] National asset data are as of September 30, 2017. National deposit, ranking, and market-share data are as of June 30, 2017, unless otherwise noted.

[6] In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

[7] State deposit, ranking, and market-share data are as of June 30, 2016, unless otherwise noted.

by the management of the institutions to be acquired.[8] Section 3(c) of the BHC Act requires the Board to review each application in light of certain factors specified in the Act. The Board has long held that, if the statutory criteria are met, withholding approval based on other factors, such as whether the proposal is acceptable to the management of the organization to be acquired, would be outside the scope of factors the Board is authorized to consider under the BHC Act.[9]

In evaluating the statutory factors under the BHC Act, the Board considered the information and views presented by the commenters and the information submitted by Natcom. In addition, the Board has consulted with relevant supervisory agencies and reviewed confidential supervisory information, including examination reports of the institutions involved. After a review of all the facts of record, and for the reasons discussed in this order, the Board has concluded that the statutory factors it is required to consider under the BHC Act are consistent with approval of the proposal.

Interstate and Deposit Cap 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 to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.[10] Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.[11] In addition, the Board may not approve an interstate application if the bank holding

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[8] See, e.g., Central Pacific Financial Corp., 90 Federal Reserve Bulletin 93, 93 (2004); North Fork Bancorporation, Inc., 86 Federal Reserve Bulletin 767, 768 (2000); The Bank of New York Company, Inc., 74 Federal Reserve Bulletin 257, 258–59 (1988).

[9] See supra note 9.

[10] 12 U.S.C. § 1842(d)(1)(A).

[11] 12 U.S.C. § 1842(d)(1)(B).

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.[12]

For purposes of the BHC Act, the home state of Natcom is Wisconsin, and Republic Bank's home state is Minnesota.[13] Minnesota has a five-year minimum age requirement, and Republic Bank has been in existence for more than five years.[14] In addition, Natcom is well capitalized and well managed under applicable law, and its subsidiary bank, National Bank of Commerce, has an "Outstanding" rating under the Community Reinvestment Act of 1977 ("CRA").[15]

On consummation of the proposed transaction, Natcom would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. In addition, Natcom would control less than 30 percent of the total deposits of insured depository institutions in Minnesota, the only state in

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[12] 12 U.S.C. § 1842(d)(2)(A) and (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. 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. See 12 U.S.C. § 1841(*o*)(4)–(7).

[13] See 12 U.S.C. § 1841(*o*)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A national bank's home state is the state in which the main office of the bank is located.

[14] See Minn. Stat. § 48.93 subd. 4(6).

[15] 12 U.S.C. § 2901 et seq.

which Natcom and Republic have overlapping banking operations.[16] The Board has considered all other requirements under section 3(d) of the BHC Act, including Natcom's record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.

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. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant 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.[17]

The Board's analysis of the competitive effects of the proposal assumes a full merger between Natcom, Republic, and their subsidiary banks, with Natcom and National Bank of Commerce as the surviving entities. Accordingly, the analysis assumes that Republic Bank would not compete independently of Natcom and National Bank of Commerce.[18]

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[16] Minnesota does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

[17] 12 U.S.C. § 1842(c)(1).

[18] See ANB Holding Company, Ltd., 83 Federal Reserve Bulletin 902, 903–04 (1997) (approving ANB Holding Company, Ltd.'s ("ANB") acquisition of 41 percent of Lakeside Bancshares, Inc., a bank holding company that directly competed in the same banking market as ANB).

The commenters assert that by virtue of becoming a shareholder of Republic, Natcom would be able to access sensitive business and customer information regarding both Republic and Republic Bank that would allow Natcom to engage in anti-competitive behavior. Natcom represents that it entered into a consent order with the Minnesota Department of Commerce ("Department") in connection with the Department's recent approval of a corresponding application to the state to acquire an interest in Republic.

National Bank of Commerce and Republic Bank compete directly in the Duluth, Minnesota banking market ("Duluth market").[19] The Board has considered the competitive effects of the proposed acquisition in the Duluth market. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative shares of total deposits of insured depository institutions in the market ("market deposits") that Natcom would control;[20] the concentration levels of

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The consent order limits Natcom's rights to receive certain information that otherwise would be available to any shareholder of Republic under Minnesota law. Pursuant to the consent order, Natcom would not have access to certain information regarding Republic's share register, records of shareholder and board proceedings, articles and bylaws, certain financial statements, reports made to shareholders, certain voting trust and other shareholder control agreements, names and business addresses of the directors and principal officers, agreements incorporated by reference into the articles of incorporation, and other information that would be available to any shareholder that could show that the request was for a proper purpose. See Minn. Stat. § 302A.461, sub. 4. Republic has appealed the Department's order approving the application to a court of competent jurisdiction, which could as a result set aside the consent order, and has requested that the Board postpone its decision until the appeal is resolved fully. Action on this proposal would not interfere with the court's ability to resolve the pending litigation. M&P Community Bancshares, Inc., 92 Federal Reserve Bulletin C156, C156 n.7 (2006).

[19] The Duluth market is defined as Lake County; Fairbanks, Ellsburg, Ault, Kelsey, Cotton, Pequaywan, Elmer, Meadowlands, Northland, North Star, Alden, Van Buren, Ness, Alborn, New Independence, Fredenberg, Gnesen, Normanna, Halden, Floodwood, Culver, Industrial, Grand Lake, Canosia, Rice Lake, Lakewood, Duluth, Prairie Lake, Fine Lakes, Arrowhead, Stoney Brook, Brevator, Solway, and Midway townships; the cities of Hermantown, Proctor, and Duluth; Potshot Lake and Whiteface Reservoir Unorganized Territories; and Linwood Lake Unorganized Territory south of a horizontal line drawn from the northern border of Ault Township in Saint Louis County; and Carlton County (minus Split Rock, Silver, Barnum, Moose Lake, and Holyoke townships and Clear Creek Unorganized Territory), all of Minnesota; and Douglas County, Wisconsin.

[20] Deposit and market share data are as of June 30, 2016, and unless otherwise noted, 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

market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[21] and other characteristics of the market.

Using the initial competitive screening data, National Bank of Commerce is the third largest depository institution in the Duluth market, controlling approximately $421.2 million in deposits, which represent 14.3 percent of market deposits. Republic Bank is the fourth largest depository institution in the market, controlling approximately $272.7 million in deposits, which represent 9.3 percent of market deposits. If considered a combined organization on consummation of the proposal, National Bank of Commerce would be the second largest depository institution in the Duluth market, controlling approximately $694.0 million in deposits, which would represent approximately 23.6 percent of market deposits. The HHI in this market would increase 265 points, from 1578 to 1843.

The Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a

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included thrift deposits in market share calculations on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

[21] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. See Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html.

significantly adverse effect on competition in the Duluth market.[22] In particular, five credit unions exert a competitive influence in the Duluth market. Each institution offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the relevant banking market.[23] The Board finds that these circumstances warrant including the deposits of these credit unions at a 50 percent weight in calculating market influence. This weighting takes into account the limited lending done by credit unions to small businesses relative to commercial banks' lending levels.

This adjustment suggests that the resulting market concentration in the Duluth market is less significant than would appear from the initial competitive screening data, which focused on commercial-bank and thrift competitors. After consummation, and adjusting to reflect competition from credit unions in the market, the market concentration level in the Duluth market as measured by the HHI would increase by 211 points, from 1282 to 1493, a level that would be within the DOJ Bank Merger Guidelines, and the market share of Natcom would increase to 21.0 percent. In addition to the five credit unions, 20 insured depository institutions other than Natcom would

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

[23] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. See, e.g., BB&T Corporation, FRB Order No. 2015-18 (July 7, 2015); Mitsubishi UFJ Financial Group, Inc., FRB Order No. 2012-12 (November 14, 2012); Old National Bancorp, FRB Order No. 2012-9 (August 30, 2012); United Bankshares, Inc. (June 20, 2011), 97 Federal Reserve Bulletin 19 (2d Quar. 2011); The PNC Financial Services Group, Inc., 94 Federal Reserve Bulletin C38 (2008); The PNC Financial Services Group, Inc., 93 Federal Reserve Bulletin C65 (2007); Regions Financial Corporation, 93 Federal Reserve Bulletin C16 (2007); Passumpsic Bancorp, 92 Federal Reserve Bulletin C175 (2006); and Wachovia Corporation, 92 Federal Reserve Bulletin C183 (2006). In this case, Superior Choice Credit Union, Members Cooperative Credit Union, Centricity Credit Union, Harbor Pointe Credit Union, and Northwoods Credit Union together control approximately $357.5 million in deposits in the Duluth market that, on a 50 percent weighted basis, represent approximately 10.8 percent of market deposits.

remain in the market, including one insured depository institution with a market share of more than 25 percent.

The DOJ conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Duluth market or in any other relevant banking market. Accordingly, the Board finds that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[24] In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of 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. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future

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[24] 12 U.S.C. § 1842(c)(2), (5), and (6).

prospects of the organizations involved in the proposal in light of their financial and managerial resources.

Natcom and National Bank of Commerce are both well capitalized and would remain so on consummation of the proposal.[25] The proposed acquisition would be funded from Natcom's cash on hand and proceeds from a loan.[26] The asset quality, earnings, and liquidity of Natcom are consistent with approval, and Natcom appears to have adequate resources to absorb the costs of the proposal. In addition, future prospects are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved.[27] The Board has reviewed the examination records of Natcom, Republic, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Natcom, the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations, and the

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[25] The commenters asserted that the proposed acquisition will negatively impact the financial condition and operations of Republic Bank through the loss of customers and certain key employees. The Board notes that Republic and Republic Bank would both remain well capitalized on consummation of the proposal, and Natcom, which is in satisfactory financial condition, has represented that it understands its statutory obligation to serve as a source of strength for Republic Bank. See 12 U.S.C. § 1831*o*-1; 12 CFR 225.4(a)(1).

[26] Natcom has the financial resources to fund the proposal and the financial strength to support the debt obligation.

[27] The commenters asserted that Natcom's becoming a shareholder of Republic would cause Republic to lose its ability to be treated as an S corporation, which would result in the loss of significant tax savings for the owners of Republic. In addition, the commenters asserted that Natcom's proposal could result in litigation between the shareholders of Republic because some courts have held that selling shares in a manner that results in the loss of S-corporation status is a breach of a minority shareholder's fiduciary duty to its majority shareholder. Loss of tax benefits for the owners of a firm and potential shareholder litigation are matters of general corporate and tax law to be adjudicated by courts. Those matters do not fall within the scope of statutory factors the Board is required to consider. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973).

organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

Natcom, Republic, and their subsidiary depository institutions are each considered to be well managed. Natcom's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and Natcom's risk-management program is consistent with approval of this expansionary proposal. The existing management and the risk management policies and practices of Republic and Republic Bank would remain in place following the proposed acquisition, and these are considered satisfactory from a supervisory perspective.

Based on all the facts of record, including the supervisory record and managerial and operational resources of Natcom, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as records of effectiveness of Natcom and Republic in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[28] In its evaluation of the effects 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 these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, 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 their safe and sound operation,[29] and

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[28] 12 U.S.C. § 1842(c)(2).

[29] 12 U.S.C. § 2901(b).

requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[30]

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of National Bank of Commerce and Republic Bank; the fair lending and compliance records of both banks; the supervisory views of the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC"); confidential supervisory information; information provided by Natcom; and the public comments received on the proposal.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, 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, as well as information and views provided by the appropriate federal

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[30] 12 U.S.C. § 2903.

supervisors.[31] In this case, the Board considered the supervisory views of the OCC and the FDIC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[32] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test to evaluate the performance of a small insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),[33] automated loan reports, and other reports generated by the institution in order to assess the institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the institution's (1) loan-to-deposit ratio, (2) loan originations for sale to the secondary market, (3) lending-related activities in its assessment areas ("AAs"), (4) record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, (5) geographic distribution of loans, and (6) record of taking action in response to written complaints about the institution's performance. In addition to the lending test, intermediate small institutions,

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

[32] 12 U.S.C. § 2906.

[33] 12 U.S.C. § 2801 et seq.

such as National Bank of Commerce, are subject to a community development test that evaluates the number and amounts of the institution's community development loans and qualified investments, the extent to which the institution provides community development services, and the institution's responsiveness through such activities to community development lending, investment, and service needs.[34]

CRA Performance of National Bank of Commerce

National Bank of Commerce was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the OCC, as of March 7, 2016 ("National Bank of Commerce Evaluation").[35] National Bank of Commerce received "Outstanding" ratings for both the Lending Test and the Community Development Test.[36]

Examiners determined that the bank's loan-to-deposit ratio was reasonable given the bank's size and AA credit needs. Examiners noted that a substantial majority of National Bank of Commerce's loans were originated in its AA. Examiners also noted that National Bank of Commerce's distribution of commercial loans reflected reasonable penetration among businesses of different sizes. In addition, examiners found that the bank's geographic distribution of business loans reflected excellent dispersion throughout the bank's AA.

Examiners found that National Bank of Commerce's community development activities showed excellent responsiveness to the bank's AA needs. Examiners noted that the bank's performance in extending community development loans

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[34] See 12 CFR 228.26.

[35] The National Bank of Commerce Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures, consisting of the lending and community development tests described above. The National Bank of Commerce Evaluation reviewed a sample of commercial loans from January 1, 2014, to December 31, 2015. Examiners also reviewed community development loans, investments, and services from May 1, 2012, to December 31, 2015.

[36] The National Bank of Commerce Evaluation reviewed the bank's activities in the Duluth, Minnesota–Wisconsin multistate metropolitan statistical area.

was excellent and that the level of qualified investments demonstrated adequate responsiveness to community needs. Examiners also found that National Bank of Commerce's community development services were excellent and that the bank offered a variety of products and services to customers of all income levels and geographies.

CRA Performance of Republic Bank

Republic Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of July 10, 2017 ("Republic Bank Evaluation").[37] Republic Bank received a "Satisfactory" rating for the Lending Test and an "Outstanding" rating for the Community Development Test.[38]

Examiners found that the bank's loan-to-deposit ratio was more than reasonable given the bank's size, financial condition, and AA credit needs. Examiners noted that the majority of the bank's small business and home mortgage loans were originated in its AA. Examiners also noted that Republic Bank's distribution of borrowers reflected reasonable penetration of loans among businesses of different sizes and individuals of different income levels. Examiners found that the geographic distribution of loans reflected reasonable dispersion of loans to small businesses and excellent dispersion of loans to individuals throughout the bank's AA.

Examiners found that Republic Bank demonstrated excellent responsiveness to its AA community development needs through community development loans and services. Examiners also noted that the bank's qualified investments reflected excellent responsiveness to its AA community development needs.

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[37] The Republic Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures. Examiners reviewed a sample of selected small business loans originated or renewed between January 1, 2016, and December 31, 2016, and all home mortgage loans reported on the bank's 2015 and 2016 HMDA loan application registers. Examiners reviewed community development loans, qualified investments, and community development services since June 4, 2014.

[38] The Republic Bank Evaluation reviewed the bank's activities in eastern Carlton and southern Saint Louis counties, both in Minnesota.

Views of the OCC

The Board has considered the record of National Bank of Commerce in complying with fair lending and other consumer protection laws. The OCC conducted a recent consumer compliance examination of National Bank of Commerce, which included a review of the bank's consumer compliance program and the bank's compliance with consumer protection laws and regulations. The Board has taken this information into account in evaluating this proposal.

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 Natcom, the 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 concludes that the convenience and needs factor is consistent with approval.[39]

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in

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[39] The commenters asserted that the acquisition would result in a loss of a community institution and the services that Republic and Republic Bank provide. They also noted that Republic Bank is rated "Outstanding" for CRA, implying that the transaction would negatively affect Republic Bank's CRA performance. As discussed above, Natcom is acquiring a minority interest in Republic. Natcom represents that the proposal would not result in any changes to the programs, products, or services currently offered by Republic Bank. Upon consummation of the proposed transaction, both Republic and Republic Bank would continue to operate independently. In addition, as noted above, National Bank of Commerce also is rated "Outstanding" for CRA.

greater or more concentrated risks to the stability of the United States banking or financial system."[40]

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[41] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[42]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that result in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would

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[40] Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601 (2010), codified at 12 U.S.C. § 1842(c)(7).

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

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

result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[43]

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that is less than $10 billion in assets and a pro forma organization of less than $100 billion in assets. Natcom's acquisition of a minority interest in Republic would not result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. The transaction would not be likely to pose systemic risks.

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, 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 BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Natcom with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the

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

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

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

By order of the Board of Governors,[44] effective December 18, 2017.

Ann E. Misback (signed)

Ann E. Misback
Secretary of the Board

[44] Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.