FRB Order No. 2018-05
February 12, 2018

# FEDERAL RESERVE SYSTEM

Howard Bancorp, Inc.
Ellicott City, Maryland

## Order Approving the Acquisition of a Bank

Howard Bancorp, Inc. ("Howard"), Ellicott City, Maryland, 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 First Mariner Bank ("FM Bank"), Baltimore, Maryland. FM Bank would be merged into Howard's subsidiary bank, Howard Bank, Ellicott City, Maryland.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 Federal Register 48081 (October 16, 2017)).[4] 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.

Howard, with consolidated assets of approximately $1.1 billion, is the 655th largest insured depository organization in the United States. Howard controls approximately $870.1 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United

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[1] 12 U.S.C. § 1841 et seq.

[2] 12 U.S.C. § 1842.

[3] The merger of FM Bank into Howard Bank is subject to approval by the Federal Deposit Insurance Corporation ("FDIC"), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The FDIC approved the bank merger on January 31, 2018.

[4] 12 CFR 262.3(b).

States.[5] Howard controls Howard Bank, which operates only in Maryland.[6] Howard is the 18th largest insured depository organization in Maryland, controlling deposits of approximately $810.6 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[7]

FM Bank, with assets of approximately $975.2 million, operates only in Maryland. FM Bank is the 19th largest insured depository organization in Maryland, controlling deposits of approximately $770.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Howard would become the 384th largest depository organization in the United States, with consolidated assets of approximately $2.1 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Howard would control consolidated deposits of approximately $1.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Maryland, Howard would become the 12th largest depository organization, controlling deposits of approximately $1.6 billion, which represent 1.2 percent of the total deposits of insured depository institutions in that state.

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.[8] The BHC Act also prohibits the Board

[5] National asset and deposit data are as of June 30, 2017, unless otherwise noted.

[6] The proposal does not raise interstate issues under section 3(d) of the BHC Act because Maryland is the home state of Howard, and FM Bank is located only in Maryland. See 12 U.S.C. § 1842(d).

[7] State deposit data are as of June 30, 2016. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

[8] 12 U.S.C. § 1842(c)(1).

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 community to be served.[9]

Howard Bank and FM Bank compete directly in the Annapolis, Maryland, banking market ("Annapolis market") and the Baltimore, Maryland, banking market ("Baltimore market").[10] The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the number of competitors that would remain in each market; the relative share of total deposits in insured depository institutions in each market ("market deposits") that Howard would control;[11] the concentration levels of 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");[12] and other characteristics of the market.

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[9] 12 U.S.C. § 1842(c)(1)(B).

[10] The Annapolis market is defined as Anne Arundel County (excluding District 7) and Queen Anne's County, both of Maryland. The Baltimore market is defined as Baltimore City and Baltimore, Carroll, Harford, and Howard counties (excluding the Clarksville and Savage districts), all of Maryland.

[11] Local deposit and market share data are as of June 30, 2016, 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).

[12] 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

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Annapolis and Baltimore markets. On consummation of the proposal, the Annapolis and Baltimore markets would each remain moderately concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in these markets would be small, and numerous competitors would remain in each banking market.[13]

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

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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), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[13] Howard operates the 25th largest depository institution in the Annapolis market, controlling approximately $26.3 million in deposits, which represent 0.24 percent of market deposits. FM Bank is the 17th largest depository institution in the same market, controlling deposits of approximately $91.2 million, which represent approximately 0.82 percent of market deposits. On consummation of the proposed transaction, Howard would become the 15th largest depository organization in the market, controlling deposits of approximately $117.5 million, which represent approximately 1.05 percent of market deposits. The HHI for the Annapolis market would increase by 1 point to 1110, and 30 banking organizations would remain in the market.

Howard operates the 8th largest depository institution in the Baltimore market, controlling approximately $657.3 million in deposits, which represent 1.25 percent of market deposits. FM Bank is the 7th largest depository institution in the same market, controlling deposits of approximately $678.8 million, which represent approximately 1.29 percent of market deposits. On consummation of the proposed transaction, Howard would become the 7th largest depository organization in the market, controlling deposits of approximately $1.34 billion, which represent approximately 2.54 percent of market deposits. The HHI for the Baltimore market would increase by 3 points to 1789, and 43 banking organizations would remain in the market.

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 Annapolis or Baltimore markets, or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing 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.[14] 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, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively 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.

Howard and FM Bank are both well capitalized, and the combined organization would remain so on consummation of the proposed transaction. The proposed transaction is structured primarily as an exchange of shares, with a subsequent

[14] 12 U.S.C. § 1842(c)(2), (5), and (6).

merger of depository institutions.[15] The asset quality, earnings, and liquidity of Howard Bank and FM Bank are consistent with approval, and Howard appears to have adequate resources to absorb the related costs of the proposal and to complete integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal 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 Howard, Howard Bank, and FM Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Howard; 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 information provided by the commenter.

Howard, Howard Bank, and FM Bank are each considered to be well managed. The directors and senior executive officers of Howard have knowledge of and experience in the banking and financial services sectors, and Howard's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Howard's plans for implementing the proposal. Howard has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. Howard would implement its risk-management policies, procedures, and controls at the combined organization and may augment these policies, procedures, and controls based on the needs of the combined organization. Howard's

[15] To effect the transaction, each share of FM Bank common and Series A preferred stock would be converted into a right to receive Howard common stock, based on an exchange ratio. Certain warrants and options granted by FM Bank would be cancelled and converted into the right to receive a cash amount. Howard has the financial resources to effect the proposed transaction.

risk-management policies, procedures, and controls are considered acceptable from a supervisory perspective. In addition, Howard's management has the experience and resources to operate the combined organization in a safe and sound manner, and Howard plans to integrate FM Bank's existing management and personnel in a manner that augments Howard's management.[16]

Based on all the facts of record, including Howard's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, 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 the records of effectiveness of Howard and FM Bank in combating 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.[17] 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 Community Reinvestment Act ("CRA").[18] 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

[16] Following consummation of the proposed transaction, Howard's board of directors will consist of fourteen directors, including eight of the thirteen members now on Howard's board and six members chosen by FM Bank from FM Bank's current board.

[17] 12 U.S.C. § 1842(c)(2).

[18] 12 U.S.C. § 2901 et seq.

their safe and sound operation,[19] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[20]

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 Howard Bank and FM Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Howard, and the public comment received on the proposal.

*Public Comment on the Proposal*

In this case, a commenter objected to the proposal on the basis of the fair lending and CRA performances of Howard Bank and FM Bank. Specifically, the commenter alleged that the banks have a poor record of lending and investing in African American and other minority communities in Baltimore and Maryland. The commenter requested that approval of the proposal be conditioned on Howard (i) meeting with members of the African American community in Baltimore to determine how Howard

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[19] 12 U.S.C. § 2901(b).

[20] 12 U.S.C. § 2903.

can better meet the community's capital needs and (ii) adopting a forward-looking CRA plan that includes commitments to increase lending to minorities in Baltimore, invest in African American communities in Baltimore, and increase the number of branches in African American communities in Baltimore.[21]

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

Howard Bank provides a broad range of financial products and services to consumers and businesses, with an emphasis on serving local markets and small- and medium-sized businesses. Through its network of branches in Maryland, Howard Bank offers a variety of products and services, including checking, savings, money market, and certificate of deposit accounts; commercial, residential, and consumer loans; business checking and savings accounts; and credit card and merchant card services.

FM Bank offers a range of retail and commercial banking products and services through its branches in Maryland. Its products and services include checking, savings, money market, and certificate of deposit accounts; a variety of business accounts; merchant card services; and treasury management.

Howard disputes the commenter's allegations and asserts that approval of the proposed transaction is warranted based on the banks' CRA performance evaluations, Howard Bank's recent lending activities in Baltimore, and Howard Bank's involvement in other collective efforts to address financial conditions in Baltimore. Howard asserts that Howard Bank and FM Bank have consistently met the requirements of the CRA and that Howard Bank is committed to continuing to meet the goals of the CRA after

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[21] The Board has consistently 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 organizations. See, e.g., United Bancshares, Inc., FRB Order No. 2017-10 at 12 fn. 28 (April 6, 2017); Huntington Bancshares Inc., FRB Order No. 2016-13 at 32 fn. 50 (July 29, 2016); CIT Group, Inc., FRB Order No. 2015-20 at 24 fn. 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.

consummation of the transaction. Howard notes that as part of Howard Bank's and FM Bank's CRA performance evaluations, FDIC examiners found that the banks' activities to meet the credit needs of LMI communities were satisfactory.

Howard represents that Howard Bank is currently engaged in several CRA-related activities that have been recognized in its most recent CRA performance evaluation and participates in meetings with government officials, other financial institutions, and community groups to discuss credit and investment needs in Baltimore. Howard also represents that Howard Bank has been an active home mortgage and small business lender in Baltimore City.

*Records of Performance under the CRA*

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, 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 supervisors.[22] In this case, the Board considered the supervisory views of 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.[23] 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.

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[22] See Interagency Questions and Answers Regarding Community Reinvestment, 81 Federal Register 48506, 48548 (July 25, 2016).

[23] 12 U.S.C. § 2906.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's lending 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,[24] in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's CRA Assessment Areas ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the 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;[25] (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.[26] Large institutions are also subject to an investment test, which evaluates the number and amounts of qualified investments that

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[24] 12 U.S.C. § 2801 et seq.

[25] Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. See, e.g., 12 CFR 228.22(b)(3).

[26] See 12 CFR 228.22(b).

benefit their AAs, and a service test, which evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[27] Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amounts of their community development loans and qualified investments, the extent to which they provide community development services, and their responsiveness to community development lending, investment, and service needs.[28]

*CRA Performance of Howard Bank*

Howard Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of November 2, 2015 ("Howard Bank Evaluation").[29] The bank received "Satisfactory" ratings for the Lending Test and the Community Development Test.[30]

Examiners found that the bank made a majority of its home mortgage loans and small business loans in its three AAs. Examiners determined that the bank's borrower profile revealed reasonable penetration among borrowers of different income levels and businesses of different sizes. Examiners further found that the geographic distribution of the bank's loans reflected reasonable dispersion throughout its AAs.

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[27] See 12 CFR 228.21 et seq.

[28] See 12 CFR 228.26(c).

[29] The Howard Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures, consisting of the lending test and the community development test. The Howard Bank Evaluation reviewed residential mortgage loans from January 1, 2013, through September 30, 2015; small business loans from January 1, 2013, through November 2, 2015; and community development activities from April 19, 2012, to November 2, 2015.

[30] The Howard Bank Evaluation reviewed the bank's activities in the Baltimore-Columbia-Towson, Maryland, Metropolitan Statistical Area ("MSA"); the Philadelphia-Camden-Wilmington, Pennsylvania-New Jersey-Delaware-Maryland, MSA; and the Lancaster, Pennsylvania, MSA. At the time of the Howard Bank Evaluation, Howard Bank maintained a branch in Pennsylvania, which it has since closed.

Examiners noted that the bank's loan-to-deposit ratio was more than reasonable given its size, financial condition, and its AAs' credit needs. Examiners found that Howard Bank's overall performance under the Community Development Test demonstrated adequate responsiveness to the community development needs of its AAs, considering the capacity and availability of opportunities for community development in the AAs.

In the Baltimore-Columbia-Towson, Maryland MSA (the "Baltimore MSA"), which includes the area of concern to the commenter, examiners found that the geographic distribution of Howard Bank's loans reflected a reasonable distribution throughout the AA. Examiners found that, during 2014 and 2015, Howard Bank substantially increased its home mortgage lending volume in the Baltimore MSA and substantially increased the percentage of its home mortgage loans in LMI census tracts in the Baltimore MSA, which reflected a positive trend. Examiners also determined that Howard Bank's small business lending in the Baltimore MSA reflected reasonable geographic distribution throughout the AA. Examiners found that the distribution of Howard Bank's borrowers within the Baltimore MSA reflected reasonable penetration among individuals of different income levels and businesses of different sizes. Examiners determined that Howard Bank demonstrated adequate responsiveness to the community development needs of its AA in the Baltimore MSA through community development loans, qualified investments, and community development services.

*Howard Bank's Efforts since the Howard Bank Evaluation*

Howard represents that, since the Howard Bank Evaluation, Howard Bank has continued, and in some cases expanded, its mortgage and small business lending, community development investments, and services in Baltimore in ways that confirm the bank's commitment to the goals of the CRA. Specifically, Howard represents that Howard Bank has made a substantial number and amount of mortgage and small business loans in Baltimore City, including loans to minority and LMI borrowers. Howard further represents that Howard Bank has used innovative and flexible loan programs to address the needs of LMI borrowers in its community. In addition, Howard represents that Howard Bank has participated in state and local programs that are designed to enhance mortgage lending to LMI borrowers. Howard also represents that Howard Bank has been active in community development lending and has made significant investments in LMI communities in the Baltimore area.

*CRA Performance of FM Bank*

FM Bank received an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the FDIC, as of June 27, 2015 (“FM Bank Evaluation”).[31] The bank received a “Low Satisfactory” rating for the Lending Test, a “High Satisfactory” rating for the Investment Test, and an “Outstanding” rating for the Service Test.[32]

Examiners concluded that FM Bank’s lending activity reflected good responsiveness to the credit needs of its AA. Although examiners noted that the bank’s level of home mortgage lending to low-income borrowers was not commensurate with the percentage of low-income families in its AA, examiners concluded that the bank’s borrower profile reflected good penetration among borrowers of different income levels (including LMI borrowers). Examiners noted that the bank’s home mortgage lending performance in LMI geographies fell just below the aggregate’s performance in LMI geographies in its AA. However, examiners found that market share data and FM Bank’s lending performance in LMI geographies, when compared to the bank’s peers, supported the conclusion that the geographic distribution of the bank’s home mortgage lending was

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[31] Although FM Bank is classified as an Intermediate Small Bank, the FM Bank Evaluation was conducted using Large Bank Examination Procedures at the request of FM Bank’s management. Examiners reviewed home mortgage and small business loans from January 1, 2013, through March 31, 2015. The evaluation period for community development loans, investments, and services was from November 2, 2012, through July 27, 2015.

[32] The FM Bank Evaluation included a full-scope evaluation of one AA that includes the Baltimore-Columbia-Towson, Maryland, MSA; the Washington-Arlington-Alexandria, District of Columbia-Virginia-Maryland-West Virginia, MSA; and the California-Lexington Park, Maryland, MSA. The bank’s entire AA is within the Washington-Baltimore-Arlington, District of Columbia-Maryland-Virginia-West Virginia-Pennsylvania, Combined Statistical Area.

adequate. With respect to business lending, examiners found that the bank's lending to businesses of different sizes reflected good penetration and that the bank's performance with respect to small business lending in LMI geographies was excellent. Examiners also determined that the bank made an adequate level of community development loans, including in Baltimore County and Baltimore City, Maryland, both areas of concern to the commenter. Examiners found that the bank made extensive use of innovative and flexible loan products in order to serve the credit needs of the AA and highlighted the bank's use of innovative and flexible loan programs in Baltimore County and Baltimore City, Maryland.

Examiners found that the bank made and maintained a significant level of qualified community development investments and donations. The bank's qualified investments were found to exhibit good responsiveness to credit and community economic development needs, most of which support development of affordable housing.

Examiners concluded that FM Bank's retail delivery systems were accessible to essentially all portions of its AA, including LMI geographies, and that services did not vary in a way that inconvenienced portions of its AA. Moreover, examiners found the bank to be a leader in providing community development services throughout its AA.

*FM Bank's Efforts since the FM Bank Evaluation*

Howard represents that since the FM Bank Evaluation, FM Bank has continued, and in some cases expanded, its mortgage and small business lending, community development investments, and services in Baltimore, including with respect to minority and LMI borrowers and geographies. Howard further represents that FM Bank has used innovative and flexible programs to enhance its lending to LMI borrowers. Howard represents that FM Bank has been active in community development lending and has made significant investments in LMI communities in the Baltimore area.

*Views of the FDIC*

In its review of the proposal, the Board consulted with the FDIC regarding Howard Bank's and FM Bank's CRA, consumer compliance, and fair lending records.

The FDIC reviewed the bank merger underlying this proposal and, in so doing, considered the comment received by the Board. The Board has considered the results of the FDIC's most recent consumer compliance examinations of Howard Bank and FM Bank, which included evaluations of the banks' compliance management systems and the banks' compliance with consumer protection laws, including fair lending laws and regulations. Examiners also conducted transaction testing and fair lending reviews for both banks.

The Board has taken the consultations with the FDIC and the information discussed above into account in evaluating the proposal, including in considering whether Howard has the experience and resources to ensure that the organization effectively implements policies and programs that would allow the combined organization to serve effectively the credit needs of the communities within its AAs.

*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. Howard represents that, following consummation of the proposal, existing customers of Howard Bank and FM Bank would benefit from an expanded branch and ATM network and a broader range of financial products and services. Howard represents that existing customers of FM Bank also would benefit from issuance of a new debit card that is more fraud preventative than the current FM Bank debit card and by gaining access to mobile banking for business services and to Small Business Administration loan products.

Howard represents that Howard Bank would not discontinue any material products or services currently provided by FM Bank. Further, Howard represents that Howard Bank intends to continue all of FM Bank's CRA-related activities, although some activities would be integrated into Howard Bank's existing program. In addition, Howard represents that Howard Bank intends to continue to participate in a leadership role in FM Bank's current community initiatives in the metropolitan Baltimore area.

*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, supervisory views of the FDIC, confidential supervisory information, information provided by Howard, the public comment 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.

## 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 greater or more concentrated risks to the stability of the United States banking or financial system."[33]

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.[34] These categories are not exhaustive, and additional

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

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

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.[35]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that result in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[36]

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 has less than $10 billion in assets and a pro forma organization of less than $100 billion in assets. Both the acquirer and the target are predominantly engaged in a variety of consumer and commercial banking activities.[37] The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would

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

[36] 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.

[37] Howard and FM Bank offer a range of retail and commercial banking products and services. Howard has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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 Howard 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 proposal. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors,[38] effective February 12, 2018.

*Margaret McCloskey Shanks (signed)*

Margaret McCloskey Shanks
Deputy Secretary of the Board

[38] Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.