FRB Order No. 2020-09
December 8, 2020

FEDERAL RESERVE SYSTEM

Bern Bancshares, Inc.
Bern, Kansas

Order Approving an Increase in Ownership of a Bank Holding Company

Bern Bancshares, Inc. ("Bern"), Bern, Kansas, 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 increase its ownership interest from 6.38 percent to 6.74 percent of the voting shares of UBT Bancshares, Inc. ("UBT"), Marysville, Kansas. UBT controls United Bank & Trust ("UBT Bank"), Marysville, Kansas, a state member bank.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (85 Federal Register 60469 (September 25, 2020)).[3] The time for submitting comments has expired, and the Board has considered the proposal in light of the factors set forth in section 3 of the BHC Act.

Bern, with consolidated assets of approximately $104.3 million, is the 4,053rd largest insured depository organization in the United States.[4] Bern controls approximately $80.1 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.

---

[1] 12 U.S.C. § 1841 et seq.

[2] 12 U.S.C. § 1842.

[3] 12 CFR 262.3(b).

[4] National asset, deposit, ranking, and market share data are as of June 30, 2020, unless otherwise noted. State deposit, ranking, and market share data are as of June 30, 2019, unless otherwise noted.

Bern controls State Bank of Bern ("Bern Bank"), Bern, Kansas, a state nonmember bank, which operates only in Kansas. Bern is the 160th largest insured depository organization in Kansas, controlling deposits of approximately $81.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[5]

UBT, with consolidated assets of approximately $728.8 million, is the 1,207th largest insured depository organization in the United States. UBT controls approximately $549.7 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. UBT controls UBT Bank, which operates only in Kansas. UBT is the 37th largest insured depository organization in Kansas, controlling deposits of approximately $458.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Noncontrolling Investment

Bern has stated that it does not propose to control or exercise a controlling influence over UBT as a result of the proposal. Under the BHC Act, a company controls a bank or another company if (1) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the bank or company; (2) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or (3) the Board determines that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.[6] The Board's Regulation Y sets forth presumptions for determining when one company generally would be considered to exercise a controlling influence over another company for purposes of the BHC Act.[7] The presumptions generally are based on a combination of

---

5 In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

6 12 U.S.C. § 1841(a)(2).

7 See 12 CFR part 225, subpart D.

control over voting securities and the presence of other significant relationships that may facilitate control, such as director interlocks, business relationships, and limiting contractual rights.

As a result of the proposal, Bern would acquire up to 6.74 percent of UBT's voting shares. When combined with this ownership interest, Bern's other relationships with UBT would not trigger any of the Regulation Y presumptions of control.[8] Furthermore, because Bern also would control less than 10 percent of the outstanding securities of each class of voting securities of UBT, Bern would trigger the Regulation Y presumption that it does not control UBT or UBT Bank.[9] Based on these considerations and all the facts of record, it does not appear that Bern would control UBT or UBT Bank.

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.[10] The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.[11]

Bern and UBT have subsidiary banks that compete directly in two banking markets in Kansas. The Board has considered the competitive effects of the proposal in

---

[8] 12 CFR 225.32. The Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank. See, e.g., First Citizens Bancshares, Inc., FRB Order No. 2017-01 (2017) (acquiring up to 9.0 percent of the voting shares of a bank); Penn Bancshares, Inc., 92 Federal Reserve Bulletin C37 (2006) (acquiring up to 24.89 percent of the voting shares of a bank); Sun Banks, Inc., 71 Federal Reserve Bulletin 243 (1985) (acquiring up to 15 percent of the voting shares of a bank).

[9] 12 CFR 225.33(a)(1)-(2).

[10] 12 U.S.C. § 1842(c)(1)(A).

[11] 12 U.S.C. § 1842(c)(1)(B).

these banking markets. In particular, the Board has considered the relative share of total deposits in insured depository institutions in each market ("market deposits") that Bern would control;[12] the concentration level of market deposits and the increase in this level, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[13] the number of competitors that would remain in each market; other characteristics of each market; and the noncontrolling nature of the proposed investment.

Banking Market within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Nemaha

---

[12] Local deposit and market share data are as of June 30, 2019, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); and National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

[13] In applying the DOJ Bank Merger Guidelines issued in 1995 (see https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995), the Board looks to the DOJ's Horizontal Merger Guidelines issued in 1992 and amended in 1997, for the characterization of a market's concentration. See https://www.justice.gov/atr/horizontal-merger-guidelines-0. Under these Horizontal Merger Guidelines, which were in effect prior to 2010, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The DOJ has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (see https://www.justice.gov/atr/horizontal-merger-guidelines-08192010), 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.

County/Brown County, Kansas, banking market ("Nemaha County/Brown County banking market").[14] If Bern and UBT were considered a combined organization on consummation of the proposal, the Nemaha County/Brown County banking market would remain highly concentrated as measured by the HHI, according to the concentration measures applied by the Board. The change in the HHI would be small, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in the market.[15]

Banking Market Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Marshall County, Kansas, banking market ("Marshall County banking market")[16] warrant a detailed review. If Bern and UBT were considered a combined organization on consummation, the concentration levels in this market would exceed the thresholds in the DOJ Bank Merger Guidelines and Board precedent when using initial competitive screening data.

The Board previously has stated that noncontrolling interests in directly competing depository institutions may raise competitive issues under the BHC Act. The Board has noted that a company need not acquire control of another company to lessen competition between them substantially and has recognized that a significant reduction in

---

[14] The Nemaha County/Brown County banking market is defined as Nemaha County, Kansas; and Brown County, Kansas (minus the towns of Everest and Horton).

[15] Bern operates the seventh largest depository institution in the Nemaha County/Brown County banking market, controlling approximately $38.6 million in deposits, which represent 3.9 percent of market deposits. UBT operates the third largest depository institution in the market, controlling approximately $168.0 million in deposits, which represent 17.0 percent of market deposits. If considered a combined organization on consummation of the proposal, Bern and UBT would become the second largest depository organization in the market, controlling approximately $206.7 million in deposits, which represent 20.9 percent of market deposits. The HHI would increase by 134 to 2083, and eight competitors would remain in the market.

[16] The Marshall County banking market is defined as Marshall County, Kansas; and Washington County, Kansas (minus the town of Clifton).

competition can result from the sharing of nonpublic financial information between two organizations that are not under common control.[17] Accordingly, the Board examines the specific facts of each case to determine whether a minority investment in a competitor would result in significant adverse competitive effects in a banking market.[18]

Bern operates the seventh largest depository institution in the Marshall County banking market, controlling approximately $37.4 million in deposits, which represent 5.0 percent of market deposits. UBT operates the second largest depository institution in the market, controlling approximately $182.2 million in deposits, which represent 24.3 percent of market deposits. If considered a combined organization on consummation of the proposal, Bern and UBT would be the second largest depository organization in the Marshall County banking market, controlling approximately $219.7 million in deposits, which would represent approximately 29.3 percent of market deposits. The HHI in this market would increase 242 points, from 2053 to 2295.

Although the proposal would exceed the DOJ Bank Merger Guidelines if treated as a full merger between Bern and UBT, the Board has considered additional factors that indicate the proposal is not likely to have a significantly adverse effect, or mitigate the concern that the proposal would have a significantly adverse effect, on competition in the Marshall County banking market. As discussed above, Bern would not control UBT or UBT Bank upon consummation of the proposal. In addition, Bern has committed not to acquire, or seek to acquire, any confidential or nonpublic financial information about the activities of UBT or UBT Bank in the Marshall County banking market that is not available to all of UBT's shareholders. These limitations on Bern's access to information significantly reduce the potential that Bern could influence the

---

[17] See, e.g., City Holding Company, 96 Federal Reserve Bulletin B21 (2010); SunTrust Banks, Inc., 76 Federal Reserve Bulletin 542 (1990).

[18] See, e.g., First Citizens Bancshares, Inc., FRB Order No. 2017-01 (2017); City Holding Company, 96 Federal Reserve Bulletin B21 (2010); Passumpsic Bancorp, 92 Federal Reserve Bulletin C175 (2006); BOK Financial Corp., 81 Federal Reserve Bulletin 1052 (1995); Mansura Bancshares, Inc., 79 Federal Reserve Bulletin 37 (1993); SunBanks, Inc., 71 Federal Reserve Bulletin 243 (1985).

behavior of UBT or change its own behavior in an anti-competitive way based on advance or confidential knowledge about the plans, operations, or policies of UBT Bank in the Marshall County banking market. Furthermore, even if Bern and UBT were considered a combined organization on consummation of the proposal, ten competitors would remain in the Marshall County banking market, including one competitor with more than 34 percent of market deposits and another with more than 11 percent of market deposits.

Conclusion Regarding Competitive Effects

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 the Nemaha County/Brown County banking market, the Marshall County banking market, or in any other 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, including the limited and noncontrolling nature of Bern's investment and Bern's commitment not to acquire, or seek to acquire, confidential or nonpublic financial information about or from UBT or UBT Bank regarding their activities in the Marshall County banking market, and for the reasons discussed above, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking markets in which Bern and UBT compete directly 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, as well as the effectiveness of the institutions in combatting money laundering.[19] 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 public and supervisory information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as the impact of the proposed funding of the transaction. 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.

Bern, UBT, and their subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. Bern would increase its ownership interest in UBT as a result of stock repurchases by UBT, which would not require Bern to expend any financial resources. The capital, asset quality, earnings, and liquidity of Bern and UBT are consistent with approval. Bern and UBT appear to have adequate resources to absorb the related costs of the proposal. In addition, future prospects are considered consistent with approval. In reaching these conclusions, the Board also has considered Bern's plans to withstand the potential impact of near-term economic conditions.

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

[19] 12 U.S.C. § 1842(c)(2), (5), and (6).

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

Bern, UBT, and their subsidiary depository institutions are each considered to be well managed. Bern's directors and senior executive officers have knowledge of and experience in the banking sector, and Bern's risk-management program appears consistent with approval of this proposal.

Based on all of the facts of record, including Bern's supervisory record and managerial and operational resources, the Board determines that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the record of effectiveness of Bern and UBT 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.[20] In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of these communities, and places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[21] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,[22] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its

---

[20] 12 U.S.C. § 1842(c)(2).

[21] 12 U.S.C. § 2901 et seq.

[22] 12 U.S.C. § 2901(b).

entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[23]

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, and information provided by the applicant. The Board also may consider the acquiring institution's business model and 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 Bern Bank and UBT Bank, the fair lending and compliance records of both banks, the supervisory views of the Federal Deposit Insurance Corporation ("FDIC") and the Federal Reserve Bank of Kansas City ("Reserve Bank"), confidential supervisory information, and information provided by Bern.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA evaluation, as well as other information and the supervisory views of relevant federal supervisors, which in this case are the FDIC with respect to Bern Bank and the Reserve Bank with respect to UBT Bank.[24]

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

---

[23] 12 U.S.C. § 2903.

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

meet the credit needs of its entire community, including LMI neighborhoods.[25] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test ("Lending Test") and a community development test ("Community Development Test") to evaluate the performance of an intermediate small bank, such as UBT Bank, in helping to meet the credit needs of the communities it serves. The Lending Test specifically evaluates an institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act of 1975,[26] automated loan reports, and other reports generated by the institution, in order to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is evaluated based on the institution's (1) loan-to-deposit ratio and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments; (2) percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment areas ("AAs"); (3) record of lending to, and, as appropriate, engaging in other lending-related activities for, borrowers of different income levels and businesses and farms of different sizes; (4) geographic distribution of loans; and (5) record of taking action, if warranted, in response to written complaints about the institution's performance in helping to meet credit needs in the bank's AAs.[27] The Community Development Test

---

[25] 12 U.S.C. § 2906.

[26] 12 U.S.C. § 2801 et seq.

[27] See 12 CFR 228.26(b).

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.[28] Small institutions, such as Bern Bank, are subject only to the Lending Test.[29]

CRA Performance of Bern Bank

Bern Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of February 4, 2019 ("Bern Bank Evaluation").[30] The bank received a "Satisfactory" rating for the Lending Test.

Examiners found that Bern Bank's loan-to-deposit ratio was reasonable given the institution's size and financial condition and the credit needs of the bank's sole AA. Examiners also found that the bank made a substantial majority of its small farm and small business loans inside its AA. Examiners noted that the bank's geographic distribution of loans reflected reasonable dispersion throughout the bank's AA. Examiners found that the bank's distribution of loans reflected reasonable penetration among farms and businesses of different sizes. Examiners also noted that the bank had not received any CRA-related complaints since its previous evaluation.

CRA Performance of UBT Bank

UBT Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of June 24, 2019 ("UBT Bank

---

28 See 12 CFR 228.26(c).

29 12 CFR 228.26(a).

30 The Bern Bank Evaluation was conducted using Small Institution CRA Examination Procedures. Examiners reviewed small farm and small business loans from February 19, 2013, through February 4, 2019. The Bern Bank Evaluation included a full-scope review of the bank's sole AA, which consists of Marshall and Nemaha Counties in Kansas; Pawnee County, Nebraska; and the western half of Richardson County, Nebraska.

Evaluation").[31] UBT Bank received "Satisfactory" ratings for the Lending Test and the Community Development Test.

Examiners found that UBT Bank's average net loan-to-deposit ratio was more than reasonable given the bank's size, financial condition, and the credit needs of the bank's AAs. Examiners also found that the bank originated a substantial majority of its loans within the its AAs. Examiners noted that the geographic distribution of loans reflected reasonable dispersion of lending throughout the bank's AAs and that the bank's lending reflected a reasonable penetration among individuals of different income levels and businesses and farms of different revenue sizes.

Examiners found that UBT Bank's community development activity reflected adequate responsiveness to the community development needs of the bank's 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. Bern represents that consummation of the proposal would not affect the products and services offered by Bern Bank or UBT Bank.

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 Bern, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on this

---

[31] The UBT Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures. Examiners reviewed home mortgage loans originated between January 1, 2016, and December 31, 2017, and small business and small farm loans originated between July 1, 2018, and December 31, 2018. The UBT Bank Evaluation included a full-scope review of the bank's Northeast Kansas AA and a limited-scope review of the bank's Riley County Metropolitan AA.

consideration, the Board determines that the convenience and needs factor is consistent with approval.

Financial Stability

Section 3 of the BHC Act requires the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."[32]

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.[33] 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 on the broader economy.[34]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in total assets, or that result in a firm with less than $100 billion in

[32] 12 U.S.C. § 1842(c)(7).

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

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

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.[35]

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 passive increase of a noncontrolling interest in the target institution. The proposal involves a target that has less than $10 billion in total assets, and, if Bern and UBT were combined, the pro forma organization would have less than $100 billion in total assets. Both the acquirer and the target are predominantly engaged in retail and commercial banking activities.[36] The hypothetical pro forma organization would have no 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 hypothetical organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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.

---

[35] 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.

[36] Bern and UBT both offer a range of retail and commercial banking products and services. Bern 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.

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 Bern with all the conditions imposed in this order and the commitment referenced above concerning Bern's access to information regarding UBT and UBT Bank. The Board's approval is also conditioned on receipt by Bern of all required regulatory approvals. For purposes of this action, the conditions and commitment are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors,[37] effective December 8, 2020.

Ann E. Misback (signed)
Ann E. Misback
Secretary of the Board

[37] Voting for this action: Chair Powell, Vice Chair Clarida, Vice Chair for Supervision Quarles, and Governors Bowman and Brainard.