

FEDERAL RESERVE SYSTEM

Baylake Corp.  
Sturgeon Bay, Wisconsin

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and  
the Establishment of Branches

Baylake Corp. (“Baylake”), Sturgeon Bay, Wisconsin, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),<sup>1</sup> has requested the Board’s approval under section 3 of the BHC Act<sup>2</sup> to merge with NEW Bancshares, Inc. (“New Bancshares”), and thereby indirectly acquire its subsidiary bank, Union State Bank, both of Kewaunee, Wisconsin.

In addition, Baylake’s subsidiary state member bank, Baylake Bank, also of Sturgeon Bay, has requested the Board’s approval to merge with Union State Bank pursuant to section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”), with Baylake Bank as the surviving entity.<sup>3</sup> Baylake Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main office and branches of Union State Bank.<sup>4</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 Federal Register 35,358 (2015)).<sup>5</sup> The time for submitting comments has expired, and the Board has considered the proposal and all

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<sup>1</sup> 12 U.S.C. § 1841 et seq.

<sup>2</sup> 12 U.S.C. § 1842.

<sup>3</sup> 12 U.S.C. § 1828(c).

<sup>4</sup> 12 U.S.C. § 321. These locations are listed in Appendix A. Baylake will consolidate one branch of Union State Bank with a neighboring branch of Baylake Bank.

<sup>5</sup> 12 CFR 262.3(b).

comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General and a copy of the request has been provided to the Federal Deposit Insurance Corporation (“FDIC”).

Baylake, with consolidated assets of approximately \$981.1 million, is the 717th largest depository organization in the United States.<sup>6</sup> Baylake controls Baylake Bank, which operates only in Wisconsin. Baylake is the 22nd largest insured depository organization in Wisconsin, controlling deposits of approximately \$737.9 million, which represent less than 1 percent of the total deposits in insured depository institutions in that state.<sup>7</sup>

NEW Bancshares, with consolidated assets of approximately \$86.7 million, is the 4,806th largest depository organization in the United States. NEW Bancshares controls Union State Bank, a nonmember bank that operates only in Wisconsin. NEW Bancshares is the 193rd largest insured depository organization in Wisconsin, controlling approximately \$79.0 million in deposits, which represent less than 1 percent of the total deposits held by insured depository institutions in Wisconsin.

On consummation of this proposal, Baylake would become the 657th largest depository organization in the United States, with consolidated assets of approximately \$1.1 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Baylake would control total deposits of approximately \$816.9 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Wisconsin, Baylake would become the 20th largest depository institution, controlling deposits of

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<sup>6</sup> Nationwide deposit, asset, and ranking data are as of June 30, 2015. In this context, insured depository institutions include commercial banks, savings banks, savings associations, and non-deposit trust companies.

<sup>7</sup> State deposit, market share, and ranking data are as of June 30, 2014.

approximately \$816.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

### Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit 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. Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition 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 community to be served.<sup>8</sup>

Baylake and NEW Bancshares have subsidiary depository institutions that compete directly in the Green Bay, Wisconsin, banking market (the “Green Bay banking market”).<sup>9</sup> The Board received two comments objecting to the proposal on the grounds that consummation of the proposal would result in decreased competition in Kewaunee, Wisconsin. These commenters expressed concern that consummation of the proposal would have an adverse impact on fees and loan rates in Kewaunee, Wisconsin.

The relevant banking market must reflect commercial and banking realities and should consist of the local area where banks offer their services and where local customers can practicably find alternatives. The key question to be considered in making this selection is “where, within the area of competitive overlap, the effect of the merger on competition will be direct or immediate.”<sup>10</sup> In determining the relevant geographic market, the Board reviews a number of factors that identify the geographic area in which

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<sup>8</sup> 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

<sup>9</sup> The Green Bay banking market is defined as Brown and Kewaunee counties; Morgan, Abrams, Pensaukee, Chase, and Little Suamico townships in Oconto County; Angelica and Maple Grove townships in Shawano County; Oneida township in Outagamie County; and Cooperstown township in Manitowoc County, all in Wisconsin.

<sup>10</sup> St. Joseph Valley Bank, 68 Federal Reserve Bulletin 673 (1982) (quoting United States v. Philadelphia National Bank, 374 U.S. 321, 357 (1963)).

competitive forces act to affect the pricing and availability of banking products and services. These include data on worker commuting patterns, as indicated by census data; population density; degree of economic integration; and other similar factors that indicate the geographic scope of competition.<sup>11</sup>

In this case, the Board has considered that a significant number of Kewaunee County and City of Kewaunee residents commute to Brown County, the central county of the Green Bay Metropolitan Statistical Area (“Green Bay MSA”). While there are numerous banking options in Brown County, the Board also notes that residents of Kewaunee County have closer banking alternatives available in the towns of Casco, Luxemburg, and Algoma, for which the travel time from Kewaunee County is approximately 20 minutes. Based on the proximity and economic integration of Kewaunee County with these other areas, and all the facts of record, the Board concludes that the relevant banking market to consider in reviewing the competitive effects of this proposal is the Green Bay banking market.

The Board has considered the competitive effects of the proposal in the Green Bay banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative share of total deposits in insured depository institutions in the market (“market deposits”) that Baylake would control;<sup>12</sup> the concentration level of market deposits and

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<sup>11</sup> See Crestar Bank, 81 Federal Reserve Bulletin 200, 201 n.5 (1995); Pennbancorp, 69 Federal Reserve Bulletin 548 (1983); St. Joseph Valley Bank, 68 Federal Reserve Bulletin 673 (1982); and U.S. Bancorp, 67 Federal Reserve Bulletin 60, 61 n.2 (1981).

<sup>12</sup> Deposit and market share data are as of June 30, 2014, 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 53 (1991).

the increase in that level, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);<sup>13</sup> the comments received on the proposal; and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Green Bay banking market. On consummation of the proposal, the Green Bay banking market would remain moderately concentrated, as measured by the HHI. The HHI change would be minimal, and numerous competitors would remain in the market.<sup>14</sup>

The DOJ 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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<sup>13</sup> 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](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

<sup>14</sup> Baylake operates the seventh largest depository institution in the Green Bay banking market, controlling approximately \$288.2 million in deposits, which represent 4.9 percent of market deposits. NEW Bancshares operates the 14th largest depository institution in the same market, controlling deposits of approximately \$75.1 million, which represent 1.3 percent of market deposits. Upon consummation of the proposed transaction, Baylake would become the fifth largest depository institution in the market, controlling deposits of approximately \$363.3 million, which represent 6.2 percent of market deposits. The HHI for the Green Bay banking market would increase by 12 points to a level of 1426, and 19 competitors 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 Green Bay banking market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

#### Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act, the Bank Merger Act, and the FRA, the Board considers the financial and managerial resources and the future prospects of the institutions involved. 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, 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.

Baylake and Baylake Bank are both well capitalized and would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a cash and stock purchase, with a subsequent merger of the

subsidiary depository institutions.<sup>15</sup> The asset quality, earnings, and liquidity of Baylake and NEW Bancshares are consistent with approval, and Baylake appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Baylake, NEW Bancshares, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Baylake; 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; as well as information provided by commenters.

Baylake, NEW Bancshares, and their subsidiary depository institutions are each considered to be well managed. Baylake's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of Baylake have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered Baylake's plans for implementing the proposal. Baylake 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. Baylake would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Baylake's and NEW Bancshares'

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<sup>15</sup> To effect the holding company merger, each share of NEW Bancshares common stock would be converted into a right to receive Baylake common stock and cash, based on an exchange ratio. Baylake expects to fund the cash portion of the exchange with financing from a third-party lender. Baylake has the financial resources to support this obligation.

management have the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Baylake plans to integrate NEW Bancshares' existing management and personnel in a manner that augments Baylake's management.

Based on all the facts of record, including Baylake's supervisory record, managerial and operational resources, plans for operating the combined institution after consummation, and comments received on the proposal, 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 Baylake and NEW Bancshares 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 and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.<sup>16</sup> In its evaluation of the effect of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, 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").<sup>17</sup> 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,<sup>18</sup> and requires the appropriate federal financial supervisory agency to assess a depository institution's

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<sup>16</sup> 12 U.S.C. § 1842(c)(2).

<sup>17</sup> 12 U.S.C. § 2901 et seq.

<sup>18</sup> 12 U.S.C. § 2901(b).

record of helping to meet the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods.<sup>19</sup>

In addition, the Board considers the banks’ overall compliance record 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 applicant institution’s business model, its marketing and outreach plans, the organization’s plans following 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 Baylake Bank and Union State Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Baylake, and the public comments received on the proposal.

*Records of Performance under the CRA*

As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution’s performance in light of examinations and other supervisory information and information and views provided by the appropriate federal supervisors.<sup>20</sup>

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

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<sup>19</sup> 12 U.S.C. § 2903.

<sup>20</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 75 Federal Register 11,642, 11,665 (March 11, 2010).

meet the credit needs of its entire community, including LMI neighborhoods.<sup>21</sup> An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply 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 home mortgage, small business, small farm, and community development 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 ("HMDA"), 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 the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; the geographic distribution of such loans, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; the distribution of such loans based on borrower characteristics, including the number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;<sup>22</sup> the institution's community

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<sup>21</sup> 12 U.S.C. § 2906.

<sup>22</sup> Examiners also consider the number and amount 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).

development lending, including the number and amount of community development loans and their complexity and innovativeness; and the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

*CRA Performance of Baylake Bank*

Baylake Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago, as of August 26, 2013 ("Baylake Bank Evaluation").<sup>23</sup> The bank received "High Satisfactory" ratings for the Lending Test, the Investment Test, and the Service Test.<sup>24</sup>

Examiners found that the bank originated a high percentage of loans within its assessment areas and that the geographic distribution of loans reflected good penetration throughout its assessment areas. Examiners noted that the bank's lending levels reflected a good responsiveness to the credit needs of its assessment areas. Examiners found that the bank's distribution of loans reflected a good penetration among borrowers of different income levels, as well as small businesses and small farms of different sizes. Finally, examiners noted that the bank made an adequate level of community development loans, and made extensive use of innovative and flexible lending practices to serve the credit needs of borrowers in its assessment areas.

Examiners found Baylake Bank to have a good level of qualified community development investments, particularly those that are not routinely provided by private investors. Examiners noted that the bank's investments were focused on affordable housing through the purchase of mortgage-backed securities, revitalization and

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<sup>23</sup> The Baylake Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The Baylake Bank Evaluation reviewed HMDA and CRA reportable lending from January 1, 2011, through December 31, 2012. The evaluation period for community development loans, investments, and services was January 1, 2011, through August 26, 2013.

<sup>24</sup> The Baylake Bank Evaluation included a full-scope review of three assessment areas: the Green Bay MSA; the Door County Non-Metropolitan Area; and the Waupaca-Waushara-Green Lake County Non-Metropolitan Area. A limited-scope review was performed in the Appleton MSA and the Manitowic County Non-Metropolitan Area.

stabilization through the purchase of bonds that fund improvements in targeted areas, and community service activities that support education. Examiners found that the bank exhibited good responsiveness to credit and community development needs.

Examiners noted that Baylake Bank's delivery systems were reasonably accessible to the bank's geographies and individuals of different income levels in its assessment areas. Examiners found that the bank's business hours and banking services did not vary in a way that inconvenienced its assessment areas, particularly LMI geographies or LMI individuals, and that the bank's record of opening and closing branch offices had not adversely impacted LMI geographies or individuals. Finally, examiners noted that the bank provides a relatively high level of community development services.

#### *CRA Performance of Union State Bank*

Union State Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of March 23, 2015 (the "Union State Bank Evaluation"),<sup>25</sup> with a rating of "Satisfactory" for the Lending Test.<sup>26</sup>

Examiners found that the bank's loan-to-deposit ratio was reasonable given the bank's size, financial condition, and credit needs within the bank's assessment areas. Examiners noted that the bank originated a majority of home mortgage loans and small

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<sup>25</sup> The Union State Bank Evaluation was conducted using the Small Bank CRA Examination Procedures. The Lending Test included a review of HMDA reportable lending for 2013 and 2014 and a random selection of small business loans originated since January 1, 2014. The lending activities within each category were given equal weight in the Union State Bank Evaluation, as both categories represent the primary lending focus of the institution.

<sup>26</sup> The lending test applicable to small banks specifically evaluates the institution's loan-to-deposit ratio and other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments; the percentage of loans and other lending-related activities located in the bank's assessment areas; the bank's record of lending to and engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes; the geographic distribution of the bank's loans; and the bank's record of taking action in response to written complaints about its performance in helping to meet credit needs in its assessment areas. See, e.g., 12 CFR 228.26(b).

business loans within its assessment areas.<sup>27</sup> Examiners also noted that the bank's geographic distribution of home mortgage loans and small business loans reflected reasonable penetration among borrowers of different income levels and businesses of different sizes and that home mortgage loans and small business loans reflected a reasonable distribution throughout the bank's assessment areas.

*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. Baylake represents that customers of the combined organization would benefit from increased lending capabilities upon consummation of the proposal and that the proposal would provide such customers with access to an expanded ATM network. In addition, Union State Bank's customers would benefit from expanded availability of products and services that are not currently offered by Union State Bank, including a wider array of deposit products, online banking, and mobile banking.

The Board received a comment from a member of the local school board in Kewaunee County, objecting to the proposal on the basis that it would have an adverse impact on the availability of low-cost products and services offered by the resulting institution to municipal organizations and that, as a result, the school board may be required to look outside of the Kewaunee County community for banking alternatives. Based on consultations with members of school boards in other school districts, this commenter asserts that other school districts do not have access to the same low-cost products and services currently offered by Union State Bank.

Baylake represents that it has no plans to eliminate any products or services in this banking market upon consummation of the proposal and that Baylake Bank would continue to offer the same products and services currently provided by Union State Bank, as well as additional products and services that Baylake Bank currently makes available

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<sup>27</sup> The Union State Bank Evaluation included a review of the bank's assessment areas consisting of Brown County, Kewaunee County, and Manitowoc County.

to its customers. Moreover, as described above, 19 competitors would remain in the Green Bay banking market, the relevant banking market in which the commenter is located, ensuring that alternative banking options are available at competitive prices within the relevant banking market upon consummation of the proposal.

*Conclusion on Convenience and Needs Considerations*

The Board has considered all the facts of record, including the records of the relevant depository institutions involved under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, consultations with the FDIC, confidential supervisory information, information provided by Baylake, the public comments received 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 the BHC Act and the Bank Merger 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.”<sup>28</sup>

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the 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

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<sup>28</sup> Dodd-Frank Act § 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601 (2010), codified at 12 U.S.C. §§ 1828(c)(5) and 1842(c)(7).

resulting firm.<sup>29</sup> These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the 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.<sup>30</sup>

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, Baylake would have approximately \$1.1 billion in consolidated assets and would not be likely to pose systemic risks. The Board generally presumes that a proposal that involves an acquisition of less than \$2 billion in assets, or results in a firm with less than \$25 billion in total consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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

#### Establishment of Branches

Baylake Bank has applied under section 9 of the FRA to establish branches at the current locations of Union State Bank. The Board has assessed the factors it is required to consider when reviewing an application under that section.<sup>31</sup> Specifically, the Board has considered Baylake Bank's financial condition, management, capital, actions

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<sup>29</sup> Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

<sup>30</sup> For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order 2012-2 (February 14, 2012).

<sup>31</sup> 12 U.S.C. § 322; 12 CFR 208.6.

in helping to meet the convenience and needs of the communities to be served, CRA performance, and investments in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Baylake and Baylake Bank 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 applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors,<sup>32</sup> effective November 16, 2015.

*Margaret McCloskey Shanks (signed)*

Margaret McCloskey Shanks  
Deputy Secretary of the Board

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<sup>32</sup> Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell and Brainard.

## Appendix A

### Branches to Be Acquired by Baylake Bank

1. 223 Ellis Street, Kewaunee, Wisconsin 54216
2. 3223 Main Street, Green Bay, Wisconsin 54311
3. 931 Marquette Drive, Kewaunee, Wisconsin 54216
4. 2221 Lincoln Avenue, Two Rivers, Wisconsin 54241