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Legal Developments: First Quarter, 2016

Order Issued Under Bank Merger Act

Goldman Sachs Bank USA
New York, New York

*Order Approving the Acquisition of Assets and Assumption of Liabilities
FRB Order No. 2016–03 (March 21, 2016)*

Goldman Sachs Bank USA (“GS Bank”), the state member bank subsidiary of The Goldman Sachs Group, Inc. (“Goldman Sachs”), both of New York, New York, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”)¹ to assume substantially all the deposit liabilities and acquire certain limited assets from GE Capital Bank, Holladay, Utah, the industrial bank subsidiary of General Electric Capital Corporation (“GECC”), Norwalk, Connecticut.²

Under the proposal, GS Bank would assume approximately \$17 billion of GE Capital Bank’s \$18.2 billion in deposits. GS Bank also would acquire certain technology and intangible assets used by GE Capital Bank to manage its online retail deposit-taking platform; these assets represent approximately 1 percent of the total assets of GE Capital Bank. GS Bank also would hire certain employees of GE Capital Bank who manage and provide support for the online deposit platform. The deposits to be acquired are currently held at GE Capital Bank’s Utah office and, upon consummation of the proposal, would be held at GS Bank’s branch located in Salt Lake City, Utah.

Goldman Sachs, with consolidated assets of approximately \$859.9 billion, is the fifth largest insured depository organization in the United States by assets.³ Goldman Sachs is the 21st largest insured depository organization in the United States by deposits, controlling deposits through GS Bank of approximately \$78.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. GS Bank has offices in Massachusetts, New Jersey, New York, and Utah, and holds its deposits in a branch in Salt Lake City, Utah. GS Bank is the second largest insured depository institution in Utah, controlling approximately 15.1 percent of the total deposits held in insured depository institutions in that state.

GE Capital Bank, with total assets of approximately \$23.0 billion, operates a single nonretail banking office in Holladay, Utah. GE Capital Bank solicits deposits nationwide

¹ 12 U.S.C. § 1828(c). The Bank Merger Act applies to a merger or consolidation between insured depository institutions, an acquisition by an insured depository institution of the assets of another insured depository institution, or an assumption by an insured depository institution of liability to pay deposits made in another insured depository institution. 12 U.S.C. § 1828(c)(2).

² GE Capital Bank is a depository institution that is insured by the Federal Deposit Insurance Corporation (“FDIC”).

³ Asset, deposit, ranking, and market-share data are as of June 30, 2015, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, savings associations, and industrial loan companies.

through an Internet-based deposit-taking platform. GE Capital Bank is the ninth largest insured depository institution in Utah, controlling approximately \$18.2 billion in deposits, which represent approximately 3.5 percent of the total amount of deposits of insured depository institutions in that state.

On consummation of the proposal, Goldman Sachs would control approximately \$95.1 billion in deposits through GS Bank. Goldman Sachs would remain the fifth largest insured depository organization in the United States by assets and would become the 17th largest insured depository organization in the United States by deposits. GS Bank would remain the second largest depository institution in Utah, controlling approximately 18 percent of the total deposits of insured depository institutions in the state.

Public Comments on the Proposal

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board's Rules of Procedure.⁴ The Board extended the initial period for public comment to accommodate the public interest in this proposal, providing interested persons until October 30, 2015, a total period of more than 70 days, to submit written comments. The time for submitting comments has expired. The Board received comments concerning the proposal from 84 individuals and organizations.

Approximately 31 commenters submitted comments supporting the proposal.⁵ Many of these commenters describe favorable experiences with GS Bank and commended the company and its management for its support for various community development programs, initiatives, projects, and partnerships. Supporting commenters also asserted that GS Bank has worked to expand credit in distressed areas, provided low- and moderate-income (“LMI”) households with access to financial services, and developed innovative projects to benefit low-income and minority communities.

Approximately 53 commenters submitted comments either opposing the proposal, requesting that the Board approve the proposal only subject to certain conditions, or expressing concerns about the proposal.⁶ Many of these commenters express concerns about the involved institutions' performance under the Community Reinvestment Act of 1977 (“CRA”)⁷ as well as the CRA performance of GS Bank after consummation of the proposal. These commenters also express concerns about the level of GS Bank's and GE Capital Bank's small business lending and argue that GS Bank should invest more in the communities in which it would accept deposits as a result of the proposal. Some opposing commenters allege that GS Bank's community development activities are not commensurate with the bank's size and that there are racial disparities in GS Bank's origination of certain mortgage products, based on data reported for 2013 and 2014 under the Home Mortgage Disclosure Act of 1975 (“HMDA”).⁸

Many opposing commenters question whether the proposal would result in public benefits, alleging that GS Bank and its affiliates have violated laws and have been investigated for

⁴ 12 U.S.C. § 1828(c)(3); 12 CFR 262.3(b).

⁵ One commenter submitted a form supporting the proposal signed by 199 of the commenter's affiliated local organizations from 46 states.

⁶ Of the opposing commenters, approximately 16 commenters submitted individualized written comments, and approximately 37 commenters submitted substantially identical form letters. One commenter submitted a petition in opposition to the proposal with the names of 14 individuals.

⁷ 12 U.S.C. § 2901 *et seq.*

⁸ 12 U.S.C. § 2801 *et seq.*

possible violations of laws in the United States and abroad related to mortgage servicing, mortgage securitization, and asset-price manipulation. Commenters state that the Goldman Sachs organization should not be allowed to increase in size and complexity, arguing that it is “too big to fail.” Several other opposing commenters question the relationship between the Federal Reserve and Goldman Sachs.⁹

Factors Governing Board Review of the Transaction

The Bank Merger Act sets forth the factors that the Board must consider when reviewing certain transactions between insured depository institutions.¹⁰ These factors include the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the involved institutions; the effectiveness of the involved institutions in combatting moneylaundering activities; the convenience and needs of the communities to be served, including the records of performance under the CRA of the insured depository institutions involved in the transaction; and the risk to the stability of the United States banking or financial system. In proposals involving interstate transactions, the Board also must consider the concentration of deposits as a percentage of the total deposits controlled by insured depository institutions in the United States.

In evaluating the statutory factors under the Bank Merger Act, the Board considered the information and views presented by all commenters. The Board also considered all the information presented in the application and supplemental filings by GS Bank, various reports filed by the relevant companies, publicly available information, and other information and reports. In addition, the Board consulted with the relevant financial supervisory agencies and reviewed confidential supervisory information, including examination reports on the depository institutions involved. As required by the Bank Merger Act, a report on the competitive effects of the proposal was requested from the United States Attorney General. After a review of all the facts of record, and for the reasons discussed in this order, the Board has concluded that the statutory factors it is required to consider under the Bank Merger Act are consistent with approval of the proposal.

Interstate and Deposit Cap Analyses

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)¹¹ amended the Bank Merger Act¹² to provide that, in general, the Board may not approve an application to engage in a transaction under the Bank Merger Act if the transaction involves insured depository institutions with different home states and the applicant controls or would control upon consummation of the proposed transaction more than 10 percent of the total amount of deposits of insured depository institutions in the United

⁹ Some opposing commenters suggest that consideration of this proposal by the Federal Reserve would create conflicts of interest due to what commenters argue are close relationships between the institutions involved and employees of some Federal Reserve Banks. The Bank Merger Act requires that the Board act on an application filed under the Act if, as in this case, the resulting bank is to be a state member bank. 12 U.S.C. §1828(c)(2). Although the Board has delegated to the Federal Reserve Banks the authority to act on Bank Merger Act applications meeting certain criteria (see, e.g., 12 CFR 265.11(c)(11)), this matter was decided by the Board directly, without any involvement by any individuals identified by commenters.

In addition, several commenters point to press reports concerning the illegal disclosure of confidential supervisory information by an employee of the Federal Reserve Bank of New York (“New York Reserve Bank”) and an employee of the Goldman Sachs organization. As noted in the press reports cited by commenters, the employment of these individuals has been terminated by the New York Reserve Bank and the Goldman Sachs organization, respectively. The individuals have been charged for their illegal activities, have entered a plea concerning their activities, and are awaiting sentencing.

¹⁰ 12 U.S.C. § 1828(c)(5) and (11).

¹¹ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

¹² Dodd-Frank Act § 623(a), 124 Stat. at 1634, codified at 12 U.S.C. §1828(c)(13).

States. For purposes of the Bank Merger Act, the home state of GS Bank is New York and the home state of GE Capital Bank is Utah.¹³ Consummation of the proposal would result in GS Bank controlling less than 1 percent of the deposits of U.S. insured depository institutions. The proposed acquisition of deposits and assets of GE Capital Bank would not be prohibited by the law of any state in which GE Capital Bank is located.¹⁴ Accordingly, in light of all the facts of record, the Board is not required to deny the proposal under the interstate merger provisions of the Bank Merger Act.¹⁵

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.¹⁶ The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the communities to be served.

GS Bank and GE Capital Bank do not directly compete in any local retail banking market. The Department of Justice 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.

Based on all the facts of record, including the differences in business models, products, and methods for providing services to customers, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any 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 Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.¹⁷ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved, as well as information regarding the financial condition of 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

¹³ A state bank's home state is the state by which the bank is chartered. 12 U.S.C. §1828(c)(13)(C)(ii)(II). GE Capital Bank is considered to be a bank for purposes of the Bank Merger Act.

¹⁴ The proposal also is subject to the approval of the New York Department of Financial Services and the Utah Department of Financial Institutions. GSBank has complied with the relevant state filing requirements.

¹⁵ For purposes of the Riegle-Neal Interstate Banking and Branch Efficiency Act of 1994 ("Riegle-Neal Act"), both GS Bank and GE Capital Bank are authorized under federal law to, and currently do, operate in Utah. In 2008, GS Bank was formed through the merger of two Goldman Sachs subsidiaries, a New York trust company and a Utah bank; the merger was approved by the FDIC pursuant to the Bank Merger Act and the Riegle-Neal Act. See *The Goldman Sachs Trust Company*, 2008 WL8014759 (Federal Deposit Insurance Corporation 2008); see also 12 U.S.C. § 1831 u(d)(2).

¹⁶ 12 U.S.C. § 1828(c)(5).

¹⁷ 12 U.S.C. § 1828(c)(5) and (11).

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. In this case, the Board also has consulted with the FDIC and the Consumer Financial Protection Bureau (“CFPB”).

GS Bank and GE Capital Bank are well capitalized, and the resulting bank would remain so on consummation of the proposal. As noted, the proposed transaction involves the assumption of deposits and an acquisition of certain related assets, including technology, systems, and records used by GE Capital Bank to manage and accept deposits.¹⁸ GS Bank also would hire a limited number of GE Capital Bank employees responsible for managing and operating the deposit platform. The asset quality, earnings, and liquidity of GS Bank and GE Capital Bank are consistent with approval, and GS Bank appears to have adequate resources to absorb the costs of assuming and integrating GE Capital Bank’s deposits and related technology and systems. In addition, future prospects are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the bank after consummation of the proposal. The Board has considered GS Bank’s plans for implementing the proposal and has reviewed the examination records of GS Bank and GE Capital Bank, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has considered information provided by GS Bank, 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.

The directors and senior executive officers of GS Bank have substantial knowledge of and experience in the banking and financial services sectors. Moreover, GS Bank has conducted comprehensive due diligence and is devoting the necessary financial and other resources to address all aspects of the post-integration process for this proposal. The proposal represents a limited acquisition and would not appear to require substantial managerial or operational resources to integrate effectively. GS Bank would supplement its existing risk-management policies, procedures, and controls to address the additional business lines and risks associated with the operations to be acquired. In addition, GS Bank management has the experience and resources to ensure that the bank operates in a safe and sound manner after consummation of the proposal, and GS Bank plans to integrate the employees of GE Capital Bank that would be hired by GS Bank as part of this proposal in a manner that augments GS Bank’s management.

Based on all the facts of record, including GS Bank’s supervisory record, managerial and operational resources, plans for operating the resulting bank after consummation, and comments received on the proposal,¹⁹ the Board concludes that considerations relating to

¹⁸ GS Bank would assume GE Capital Bank’s liability to pay certain deposits and would receive a payment from GE Capital Bank equal to the value of the assumed deposits, subject to certain adjustments.

¹⁹ Commenters allege that GS Bank “has entered into numerous legal settlements since 2004” and that there are public reports of investigations in the United States and abroad into possible wrongdoing by affiliates of GS Bank. Commenters also allege that Goldman Sachs and GS Bank engaged in wrongful mortgage servicing practices, noting that in 2011, Goldman Sachs and GS Bank entered into a consent order with the Board related to its mortgage servicing and foreclosure activities. *See Consent Order among The Goldman Sachs Group, Inc., Goldman Sachs Bank USA, and Board, Docket Nos. 11112 BHC and 11-112 BSM* (amended February 28, 2013), available at www.federalreserve.gov/newsevents/press/enforcement/enf20130228a13.pdf. As

the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of GS Bank and GE Capital Bank in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁰ 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 CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²¹ 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 LMI neighborhoods.²² In this regard, the federal financial supervisory agencies evaluate the performance of each institution in the context of the bank's product offerings, business strategy, and institutional capacity and constraints.²³

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 institution'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 GS Bank and GE Capital Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC and the CFPB, confidential supervisory information, information provided by GS Bank, and the public comments received on the proposal. The Board also has considered the limited scope of the proposed transaction and the limited consumer banking activities of GS Bank.

Summary of Public Comments on Convenience and Needs

As noted above, the Board received comments from 31 commenters supporting the proposal. These commenters point to the benefits that GS Bank provides to the communities it serves, including the bank's 10,000 Small Businesses Initiative, which provides small

noted above, the Board has considered the supervisory history and taken the firm's record of compliance into account in considering this case. In this regard, the consent order resulted from interagency on-site reviews of several mortgage servicing companies, including GS Bank's indirect subsidiary Litton Loan Servicing LP ("Litton"), Houston, Texas, that found critical weaknesses in these servicers' mortgage servicing and foreclosure processes that resulted in unsafe and unsound practices. Goldman Sachs sold Litton in 2011 and has made remediation payments to affected borrowers under the terms of the consent order.

²⁰ 12 U.S.C. § 1828(c)(5)(B).

²¹ 12 U.S.C. § 2901(b).

²² 12 U.S.C. § 2903.

²³ See, e.g., 12 CFR 228.21(b).

business owners with free one-on-one business counseling as well as training and advice from business experts, and various other projects and partnerships with community groups. Supporting commenters also assert that GS Bank has a long history of expanding credit in distressed areas, providing access to financial services to LMI households, and working with other financial institutions, local governments, and community groups on innovative and sophisticated projects to benefit low-income and minority communities. Supporting commenters contend that GS Bank extends its community reinvestment programs beyond its CRA assessment areas and argue that beneficial projects within the commenters' communities would not have been possible without the support of GS Bank. For example, one commenter states that the Goldman Sachs organization was a key partner in a project that developed 262 units of new affordable housing alongside a mixed-use retail, educational, healthcare, and art space in Memphis, Tennessee.

The Board also received comments from 53 commenters opposing the proposal. Many of these commenters argue that GS Bank's CRA investments were inadequate with regard to small business loans in LMI communities, that GS Bank had unsuitably low levels of corporate philanthropy, and that the level of community development grants by GS Bank was inadequate for a bank of its size and importance. One commenter contends that GS Bank does not consider financial inclusion and empowerment as a part of its CRA strategy. One commenter states that GS Bank's CRA assessment areas should include California because 25 percent of complaints regarding GS Bank to the CFPB are lodged on behalf of individuals or entities in California. Another commenter alleges that GS Bank has a limited presence in South Bronx, New York. Commenters also argue that GS Bank gives limited support to community organizations.

Commenters also express concerns regarding the future performance of GS Bank under the CRA. Commenters argue that GS Bank should provide clarity on its future banking activities; they urge the Board not to approve the application until GS Bank provides more detail regarding how its CRA assessment areas would change as a result of the proposal and how GS Bank would increase CRA activity in its primary assessment areas. Several commenters argue that GS Bank be required to work with community groups to create a binding community reinvestment plan.

In addition, several commenters allege that GS Bank neglects minority communities. In this regard, two commenters allege that HMDA data reported for 2013 and 2014 by GS Bank showed discriminatory lending practices in California and in the New York City area. Other commenters raise issues about the CRA performance of GE Capital Bank, especially with regard to small business lending in LMI communities.

Many commenters allege that the proposal would provide no clear public benefit. Commenters also allege that the proposal does nothing to address the convenience and needs of the communities GE Capital Bank currently serves. A commenter alleges that GS Bank does not show commitment to serve the public interest. Another commenter criticizes Goldman Sachs for purchasing residential properties in foreclosure and then leasing the properties to residential tenants—a practice commonly referred to as “REOrental.”

Businesses of the Involved Institutions

GS Bank is a wholesale bank whose activities are focused on highnetworth individuals, institutional clients, and corporations. The bank's primary activities include accepting deposits; lending to high-net-worth individuals, institutional clients, and corporations; and making markets in overthecounter derivatives, specifically as an interest rate risk-management service to its institutional and corporate clients. GS Bank's consumer banking activities are currently limited to banking services provided to Goldman Sachs's wealth-

management customers. For example, GS Bank's mortgage-lending activities are limited to loans made as an accommodation to existing highnetworth customers.

GE Capital Bank is a commercial finance bank that focuses on extending commercial loans and leases. The bank funds its lending activities primarily through brokered deposits and deposits sourced nationwide through an online deposit-taking platform. As noted, GE Capital Bank operates a single office in Holladay, Utah. The proposed transaction is a component of a plan to dissolve GE Capital Bank; this is part of a broader strategy by GECC, the parent of GE Capital Bank, to reduce the size of GECC's financial-services businesses and thereby reduce the firm's systemic footprint and achieve other business purposes.

Records of Performance under the CRA

As indicated above, 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 in light of examinations and other supervisory information and views provided by the appropriate federal supervisors.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 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.

The CRA permits a bank to apply to its primary federal regulator to be designated as a wholesale or a limited-purpose bank.²⁶ The CRA performance of a wholesale or limited-purpose bank is assessed by evaluating the bank's community development activities.²⁷ This evaluation involves an assessment of (i) the number and amount of community development loans (including originations and purchases of loans, and other community development loan data provided by the bank, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services; (ii) the use of innovative or complex qualified investments, community development loans, or community development services, and the extent to which the investments are not routinely provided by private investors; and (iii) the bank's responsiveness to credit and community development needs.²⁸ Based on its business activities, GS Bank has been designated as a wholesale bank.

As noted above, two commenters allege that HMDA data reported for 2013 and 2014 by GS Bank show that GS Bank made a disproportionately low number of conventional home purchase and refinance loans to African American, Asian, and Hispanic borrowers in the New York City area and in California. The Board is concerned by these types of disparities because they may indicate weaknesses in the adequacy of policies and programs at an

²⁴ See Interagency Questions and Answers Regarding Community Reinvestment, 75 Fed. Reg. 11642, 11665 (March 11, 2010).

²⁵ 12 U.S.C. § 2906.

²⁶ 12 CFR 228.25. A limited-purpose bank is one that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited-purpose bank is in effect. A wholesale bank is one that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers.

²⁷ 12 CFR 228.25(c).

²⁸ *Id.*

institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.²⁹ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution. In this case, as noted above, the Board has considered all the facts of record, including the fair lending and compliance records of both banks, the supervisory views of the FDIC and the CFPB, confidential supervisory information, information provided by GS Bank, and the public comments received on the proposal. The Board also considered that, as a wholesale bank, GS Bank is not in the business of extending home mortgage loans to retail customers, and that the small number of home mortgage loans the bank does make are extended as an accommodation to existing high-net-worth customers.

CRA Performance of GS Bank

GS Bank was assigned an overall "Outstanding" rating at its most recent CRA public evaluation by the New York Reserve Bank, as of November 5, 2012 ("GS Bank Evaluation").³⁰ Examiners found that GS Bank provided a high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors. Examiners found that the bank made extensive use of innovative or complex qualified investments, community development loans, and community development services. Examiners further noted that GS Bank exhibited excellent responsiveness to credit and community economic development needs in its assessment areas.

In the New York City AA, an area on which commenters focused,³¹ examiners found that GS Bank provided a high level of community development loans, qualified investments, and services, particularly investments not provided by private investors. GS Bank exhibited excellent responsiveness to credit and community economic development needs in the New York City AA, especially after Hurricane Sandy. Examiners found that GS Bank's level of annualized community development loans and investments as a percentage of assets compared very favorably to eight similarly situated wholesale banks operating in the assessment area.³² GS Bank's community development activities primarily targeted affordable housing and revitalization and stabilization, which were identified by community contacts as essential needs within the assessment area.

Examiners found that GS Bank was a leader in community development lending in the New York City AA, in identifying key community needs and bringing financing innova-

²⁹ Other data relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

³⁰ As a wholesale bank, GS Bank was evaluated under the Community Development Test. The evaluation period for the GS Bank Evaluation was from October 1, 2010, through December 31, 2012. Examiners reviewed the level of GSBank's qualified community development loans, investments, and services in the bank's two assessment areas, which are located in the following Metropolitan Statistical Areas ("MSAs"): the New York–Northern New Jersey–Long Island, New York–New Jersey–Pennsylvania, MSA ("New York City AA") and the Salt Lake City, Utah, MSA ("Salt Lake City AA"). The New York Reserve Bank began a new CRA public evaluation of GS Bank in 2015; this public evaluation is not yet complete.

³¹ Commenters allege that GS Bank did not provide an adequate level of philanthropic support to, and did not participate in community development initiatives with, New York City-based community groups. Commenters urged GS Bank to commit to increasing its corporate philanthropy. GS Bank contends that Goldman Sachs is routinely among the leaders in corporate philanthropy, providing charitable grants through a number of different channels. The CRA does not authorize the federal banking agencies to direct a bank's charitable grants and other community development activities to specific groups, individuals, projects, or types of investments.

³² A commenter alleges that GS Bank was behind peer institutions in its percentage of assets devoted to community development.

tions to these markets.³³ GS Bank engages in community development lending through a dedicated business unit, the Urban Investment Group. Examiners found that a majority of GS Bank's community development loans used innovative and/or complex structures and involved projects that have multiple layers of financing and that require collaboration with city and state government partners.

Examiners also noted that GS Bank was a leader, when compared to similarly situated banks, in the number of community development services it provides in the New York City AA. Qualifying community development services were provided through ongoing board and committee memberships, the provision of technical financial assistance, and the development of new programs that respond to identified needs within distressed communities. Examiners found that the bank's community development activity within the New York City AA reflected an extensive level of innovativeness and complexity. In addition to Low Income Housing Tax Credit investments,³⁴ New Markets Tax Credit investments,³⁵ and predevelopment financing, GS Bank employed innovative programs, including the first social impact bond,³⁶ equity investments to acquire and refurbish foreclosed properties and sell them to LMI individuals, and a program targeting small business development.

Examiners also assigned GS Bank an "Outstanding" rating for its CRA activities in the Salt Lake City AA. In particular, examiners found that GS Bank had a high level of community development loans, qualified investments, and community development services. Examiners also noted that GS Bank made use of innovative and/or complex structures for community development lending and qualified investment opportunities. The bank's community development activities exhibited excellent responsiveness to the credit and community development needs of the Salt Lake City AA.

GS Bank's Efforts Since the 2012 CRA Evaluation

GS Bank represents that, since the 2012 CRA evaluation, the bank has made community development loans and investments focused on supporting the construction or financing of affordable housing within its assessment areas. GS Bank has partnered with community groups that provide homeowner-related services in LMI communities in New York and has provided funding for the development and preservation of affordable housing in New York.

Goldman Sachs and GS Bank, through the 10,000 Small Businesses Initiative, have committed funds to provide business education and support services as well as access to capital to small businesses in Utah. GS Bank has further invested in a joint venture focused on acquiring single-family homes in LMI neighborhoods in the Salt Lake City area with the purpose of buying foreclosed-upon properties and rehabilitating them for rental, as well as providing homebuyer education and emergency financial counseling to tenants. Goldman Sachs and GS Bank also have partnered with nonprofit organizations on many volunteer projects in the Salt Lake City area.

³³ Commenters allege that GS Bank made few of its community development loans and investments with nonprofit organizations generally, and with community development corporations in particular. In addition, a commenter alleges that GS Bank does not make financial inclusion and empowerment a part of its CRA strategy. As noted above, the CRA does not authorize the federal banking agencies to direct a bank's community development activities to specific groups, individuals, projects, or types of investments.

³⁴ See 26 U.S.C. § 42.

³⁵ See 26 U.S.C. § 45D.

³⁶ A social impact bond is a contract under which private investors provide capital and management for a public project aimed at improving specific social outcomes, such as increased educational performance. If the project achieves its stated objectives, the government entity with which the contract is made repays the private investors with returns that are based on the savings the government accrues as a result of the project's success.

As noted, the New York Reserve Bank began a new CRA public evaluation of GS Bank in 2015. While the evaluation is not complete, preliminary information indicates that levels of community development grant-making, loans, and investments by GS Bank appear to be appropriate for a bank of its size when compared to peers with similar activities. Preliminary information also indicates that the bank continues to provide flexible and innovative lending for community development purposes. There does not appear to be a reversal of any positive trends observed in the previously completed public evaluation.

CRA Performance of GE Capital Bank

GE Capital Bank was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the FDIC, as of October 15, 2012 (“GE Capital Bank Evaluation”).³⁷ GE Capital Bank received an overall rating of “Low Satisfactory” for the Lending Test and overall ratings of “High Satisfactory” for both the Investment Test and the Service Test.³⁸

When evaluating the Lending Test, FDIC examiners focused on GE Capital Bank’s community development lending performance.³⁹ Based on this focus, examiners assigned GE Capital Bank a “Low Satisfactory” rating, finding that the bank made a small but adequate level of community development loans within its assessment area. In addition, FDIC examiners assigned GE Capital Bank overall ratings of “High Satisfactory” for both the Investment Test and the Service Test because the bank provided a relatively high level of community development services, as well as a significant level of qualified community development investments and numerous grants and donations relative to the institution’s business strategy, available opportunities, and competition within the assessment area. FDIC examiners found that the bank exhibited good responsiveness to the credit and community economic development needs of the assessment area; the bank’s qualified investments primarily targeted affordable housing, which was identified as a community need within the assessment area.

Additional Convenience and Needs Considerations

While this proposal is limited in nature and does not involve the acquisition of branches, loans, or lending operations, this proposal does involve the acquisition of deposits and increased deposit-taking capabilities, and GS Bank is expected to adopt and implement appropriate policies and programs to ensure that it helps to meet the convenience and needs of its communities following this transaction. GS Bank has recognized this responsibility

³⁷ The GE Capital Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation period for the Lending Test, the Investment Test, and the Service Test was from November 5, 2008, through September 30, 2012.

³⁸ The GE Capital Bank Evaluation included a full-scope review of the bank’s sole assessment area in Salt Lake County, Utah. Examiners also considered community development loans made by GE Commercial Finance Corporate Lending, the GE Healthcare Equipment Finance Group, GS Real Estate Business Property, and GE Equity. In addition, examiners considered community development investments made by the GE Public Finance Unit.

³⁹ Several commenters criticized GE Capital Bank’s record of small business lending in the Monroe County, New York City, and Rochester areas, all in New York, alleging that the bank made a disproportionately low number of small business loans to businesses with gross annual revenue of \$1 million or less and to businesses located in LMI census tracts. Commenters also criticized GE Capital Bank’s limited lending in its Salt Lake County assessment area.

In this regard, some commenters criticize the GE Capital Bank Evaluation for omitting an analysis of the bank’s commercial lending activities as part of the Lending Test. As explained in the GE Capital Bank Evaluation, in assessing the Lending Test, FDIC examiners focused on the bank’s community development lending within its delineated assessment area of Salt Lake County, Utah. As noted in the FDIC evaluation, the lower number of CRA-reportable originations in the assessment area results from the bank’s focus on commercial financing on a nationwide basis.

and stated that it would continue its policies, practices, and activities in a manner consistent with its current “Outstanding” record of performance under the CRA. The bank also states that it would continue to implement its community development strategy, which focuses on innovative and complex community development projects, direct investment and lending, and public-private partnerships with local governments and community groups.⁴⁰

Moreover, to address the allegations of a number of commenters that the proposal would not provide a clear or significant public benefit, GS Bank has indicated that no reduction in deposit-related products or services is expected as a result of the proposal. Consummation of the proposal would also provide continuity for GE Capital Bank’s deposit customers as GE Capital Bank winds down its operations and reduces its deposit-taking activities.

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 and the CFPB, confidential supervisory information, information provided by GS Bank, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

As part of its application, GS Bank states that it is separately exploring a potential expansion of its lending activities, including an expansion of its lending to consumers. The Board expects that GS Bank will continue to help meet the credit needs of all the communities it serves, including LMI neighborhoods, in a manner commensurate with consummation of this proposal and with any future expansion of GS Bank’s lending activities. The Board will monitor GS Bank’s performance in this regard through the supervisory process.⁴¹

Financial Stability

The Dodd-Frank Act added “risk to the stability of the United States banking or financial system” as a factor that must be considered under the Bank Merger Act.⁴²

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 merged 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

⁴⁰ A commenter alleges that GS Bank intends to expand its activities into consumer and small business lending and, in view of that future expansion, urged GS Bank to create a CRA plan in partnership with community development organizations. 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 organization. See, e.g., *CIT Group, Inc.*, FRB Order No. 2015-20 at 24n.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.

⁴¹ Commenters express concerns about the wholesale-bank designation of GS Bank for CRA evaluation purposes and that the bank’s future evaluations would not review the bank’s future lending performance under the CRA. Under the Board’s regulations implementing the CRA, the Board reserves the right to revoke a bank’s designation as a wholesale or limited-purpose bank on its own initiative. See 12 CFR 228.25(b). As part of the CRA evaluation process, examiners verify whether an institution continues to meet the requirement for designation as a wholesale or limited-purpose bank. The Board will continue to monitor GS Bank’s wholesale-bank designation through the supervisory process.

⁴² Dodd-Frank Act § 604(f), Pub. L. No. 111-203, 124 Stat. 1376, 16(2010), amending 12 U.S.C. § 1828(c)(5).

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.⁴³ 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.⁴⁴

The Board has considered information relevant to the risks to the stability of the U.S. banking or financial system, including public comments on the proposal.⁴⁵ The Board has considered the effect of the proposal on Goldman Sachs's and GS Bank's systemic footprints. The approximately \$17 billion of deposits to be assumed would have a negligible effect on the systemic footprint of these organizations, increasing its shares of U.S. financial-system assets and liabilities by less than 0.1 percentage points, and deposits by less than 0.2 percentage points. The acquisition would also have a negligible effect on measures of Goldman Sachs's and GS Bank's interconnectedness, increasing Goldman Sachs's shares of U.S. intrafinancial system assets and liabilities, as well as its share of short-term funding liabilities, by less than 0.2 percentage points each.⁴⁶

The Board also has considered the net change to stability-related risks posed by the involved institutions. In this regard, the transaction would provide GS Bank with approximately \$17 billion in deposits, a deposit customer base, and a platform for increasing its deposit funding in the future. As a result, the proposal would immediately improve the stability of GS Bank's funding profile by diversifying sources of funding and increasing stable funding and would allow the bank to maintain and further improve its funding profile in the future. This should enhance financial stability. Moreover, the proposal would facilitate GECC's efforts to reduce its overall systemic footprint by exiting from its financial activities. On balance, the proposal would appear to reduce the risks posed by Goldman Sachs, GECC, and their subsidiary depository institutions.

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.

Request for Public Hearings or Meetings

Several commenters requested that the Board hold public hearings or meetings on the application. Some requesters argued that the Board should afford the public an opportunity to provide oral testimony on this application because the public did not have an oppor-

⁴³ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

⁴⁴ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

⁴⁵ Some commenters generally allege that Goldman Sachs is already systemically important and should be broken up. Two commenters also express concern over Goldman Sachs's role in the 2008–09 financial crisis.

⁴⁶ Intrafinancial system assets and liabilities represent the amount of financial obligations that U.S. banks have to and from other U.S. and foreign financial firms. These metrics, along with short-term funding liabilities, are used to measure the interconnectedness of U.S. banks.

tunity to comment on the application in 2008 by Goldman Sachs to become a bank holding company.⁴⁷

The Bank Merger Act and the CRA do not require a public meeting or a formal public hearing on an application. Under its rules, the Board also may, in its discretion, hold a public hearing or meeting if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the requests in light of all the facts of record. In the Board's view, the commenters have had ample opportunity to submit comments on the proposal. As noted above, the Board extended the initial period for public comment to accommodate the public interest in this proposal, providing interested persons until October 30, 2015, a total period of 72 days, to submit written comments. Commenters submitted numerous written comments that the Board has considered in acting on the proposal. The requests do not identify disputed issues of fact material to the Board's decision that would be clarified by a public hearing or meeting. In addition, the requests do not demonstrate why written comments do not present the commenters' views adequately or why a hearing or meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

In addition, several commenters requested a further extension of the comment period for the proposal. The Board has already provided for an extended comment period of 72 days. During this time, a number of commenters, including the requesters, submitted detailed comments in writing regarding the proposal. The Board's Rules of Procedure contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time.⁴⁸ The commenters' requests for additional time do not identify circumstances that would warrant an extension of the public comment period for this proposal.⁴⁹ Accordingly, the Board has determined not to extend further the public comment period.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposal 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 Bank Merger Act and other applicable statutes. Approval of this proposal is specifically conditioned on compliance by GS Bank with all the conditions set forth in this order. The

⁴⁷ The Board's order issued in connection with the application explained the basis for waiving public notice. *The Goldman Sachs Group, Inc.*, 94 Federal Reserve Bulletin C101 (2008). In 2009 and 2010, the Board invited public comment on applications and notices filed by Goldman Sachs under the Bank Holding Company Act of 1956 to acquire or retain shares in certain bank holding companies and savings and loan holding companies. See 75 Fed. Reg. 17142 (April 5, 2010); 74 Fed. Reg. 48970 (September 25, 2009).

⁴⁸ 12 CFR 262.25(b)(2).

⁴⁹ Two commenters express concerns about GS Bank's use of the Board's prefiling process, suggesting that commenters could not participate in the resolution of substantive issues raised by the proposal because these issues were resolved before the filing of this application. One of these commenters withdrew its comments in full following its discussions with GS Bank.

The Federal Reserve has established a prefiling process to provide potential applicants with information about the procedural requirements, such as timing and the applicable forms, associated with a proposal. See SR Letter 12-12. This process also helps to identify information that may be needed in connection with issues that the Board typically considers in connection with a particular type of application or notice, such as competition or financial stability. The prefiling process is not used, and was not used in this case, to resolve or predetermine the outcome of any substantive issues. As in every case, the substantive issues involved in this case were considered and resolved as part of the processing of GS Bank's formal application. In doing so, the Board considered all public comments on the proposal.

conditions 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 proposed transaction 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 New York Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective March 21, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Order Issued Under Federal Reserve Act

Frost Bank
San Antonio, Texas

*Order Approving the Establishment of Branches
FRB Order No. 2016-02 (March 14, 2016)*

Frost Bank, a state member bank subsidiary of Cullen/Frost Bankers, Inc. (“Cullen/Frost”), both of San Antonio, Texas, has requested the Board’s approval under section 9 of the Federal Reserve Act (“FRA”)¹ and the Board’s Regulation H² to establish two branches in Texas.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board’s Rules of Procedure.⁴ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors specified in the FRA.

Cullen/Frost is the sixth largest depository organization in Texas with 136 offices throughout Texas, controlling approximately \$23.9 billion in deposits, which represent approximately 3.3 percent of the total amount of deposits of insured depository institutions in that state.⁵ Frost Bank operates only in Texas, and the bank’s main office is in San Antonio, Texas.

Under section 208.6 of the Board’s Regulation H, which implements section 9 of the FRA,⁶ the factors that the Board must consider in acting on branch applications include (1) the financial history and condition of the applying bank and the general character of its management; (2) the adequacy of the bank’s capital and its future earnings prospects; (3) the convenience and needs of the community to be served by the branch; (4) in the case of branches with deposit-taking capability, the bank’s performance under the Community Reinvestment Act (“CRA”);⁷ and (5) whether the bank’s investment in bank premises in establishing the branch satisfies certain criteria.⁸

The Board has considered the applications in light of these factors and the public comment received on the proposal. One commenter objects to the proposal, alleging that Frost Bank discriminates against African Americans and “redlines” African American neighborhoods, particularly in the Dallas and Houston areas, both in Texas, with respect to its branching, marketing, and lending activities.⁹

¹ 12 U.S.C. § 321.

² 12 CFR Part 208.

³ Frost Bank proposes to establish one branch at 314 South WW White Road, San Antonio (the “San Antonio Branch”), and one branch at 2421 East Seventh Street, Austin, Texas (the “Austin Branch”).

⁴ 12 CFR 262.3(b).

⁵ Data are as of June 30, 2015. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

⁶ 12 CFR 208.6(b).

⁷ 12 U.S.C. § 2901 *et seq.*

⁸ 12 CFR 208.21(a).

⁹ Redlining is the practice of denying a creditworthy applicant a loan or service in a certain neighborhood even though the applicant may otherwise be eligible for the loan or service.

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Frost Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Frost Bank, and the comment received. Frost Bank is well capitalized and would remain so upon consummation of the proposal. After considering all the facts of record, the Board concludes that the financial history and condition, capital adequacy, and future earnings prospects of Frost Bank are consistent with approval of the proposal. The Board also has reviewed Frost Bank's proposed investment in the branches and concludes that its investment is consistent with regulatory limitations on investment in bank premises.¹⁰

In considering Frost Bank's managerial resources, the Board has reviewed the bank's examination record, including assessments of its management, riskmanagement systems, and operations. The Board also has considered its supervisory experiences with Frost Bank and the bank's record of compliance with applicable banking laws, including anti-money-laundering laws. Frost Bank is considered to be well managed. Based on this review and all the facts of record, the Board concludes that Frost Bank's management, as well as the effectiveness of Frost Bank in combatting money-laundering activities, are consistent with approval of the proposal.

Convenience and Needs Considerations

In considering the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institution is helping to meet the credit needs of the communities it serves, as well as other potential effects of the proposal on the convenience and needs of the communities to be served.¹¹ In this evaluation, the Board places particular emphasis on the record of the relevant depository institution under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,¹² 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.¹³

In addition, the Board considers the bank's 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 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 Frost Bank, the fair lending and compliance records of the bank, confidential supervisory information, information provided by Frost Bank, and the public comment received on the

¹⁰ 12 CFR 208.21(a).

¹¹ 12 CFR 208.6(b)(3).

¹² 12 U.S.C. § 2901(b).

¹³ 12 U.S.C. § 2903.

proposal. As noted above, a commenter objects to the proposal, alleging that Frost Bank has engaged in discriminatory practices in Houston and Dallas, both in Texas. In particular, the commenter alleges that Frost Bank disfavors certain African American neighborhoods in Houston and Dallas and has limited its lending, marketing activities, community development activities, and branching in those neighborhoods.

Frost Bank denies the commenter's allegations, arguing that it has received a "Satisfactory" rating in its most recent CRA performance evaluation. Frost Bank asserts that the allegations regarding alleged discriminatory activities in Houston are substantially similar to allegations made in 2013 and 2014 by the same commenter in connection with the applications by Cullen/Frost and Frost Bank to acquire WNB Bancshares, Inc., and to merge with Western National Bank,¹⁴ both of Odessa, Texas (the "WNB Applications"). In acting on those applications, the Board considered the commenter's allegations and determined that they did not preclude approval of the proposed acquisition.¹⁵ In the Dallas area, Frost Bank contends that it has recently opened branches that directly contribute to serving the needs of majority-minority census tracts. In addition, Frost Bank represents that the proposed Austin and San Antonio branches also would directly serve majority-minority tracts.

Records of Performance under the CRA

As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance in light of examinations and other supervisory information and views provided by the appropriate federal supervisors.¹⁶

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.¹⁷ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a 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 of 1975 ("HMDA"),¹⁸ 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 (1) the number and amount of home mortgage,

¹⁴ *Cullen/Frost Bankers, Inc.*, FRB Order No. 2014-10 (May 14, 2014) ("Cullen/Frost Order").

¹⁵ In connection with the Board's action on the WNB Applications, Cullen/Frost provided commitments to the Board related to the compliance and fair lending programs of Cullen/Frost and Frost Bank. These commitments are discussed further below.

¹⁶ See Interagency Questions and Answers Regarding Community Reinvestment, 75 *Federal Register* 11642, 11665 (March 11, 2010).

¹⁷ 12 U.S.C. § 2906.

¹⁸ 12 U.S.C. § 2801 *et seq.*

small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) 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; (3) 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;¹⁹ (4) the institution's community development lending, including the number and amount 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.

CRA Performance of Frost Bank

Frost Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Dallas ("Reserve Bank"), as of May 13, 2013 ("Frost Bank Evaluation").²⁰ Frost Bank received a "High Satisfactory" rating for the Lending Test, an "Outstanding" rating for the Investment Test, and a "High Satisfactory" rating for the Service Test.²¹

Examiners found that Frost Bank's overall lending activity in its assessment areas was good and that Frost Bank made a substantial majority of its loans inside its assessment areas. According to examiners, the bank's geographic distribution of HMDA and small business lending reflected excellent penetration in LMI geographies. Examiners also found that the bank had an excellent overall distribution of loans among borrowers of different income levels and business customers of different sizes. Examiners noted that the bank made an adequate level of community development loans during the review period. Frost Bank's community development loans were made for a variety of purposes, but the majority of loans were for the purpose of providing community services to individuals or LMI areas and for affordable housing.

In the Houston AA, an area where the commenter focused, Frost Bank exhibited good lending performance. The bank's lending activity reflected good responsiveness to assessment area credit needs, and the bank's geographic distribution of loans reflected excellent penetration throughout the assessment area. The bank's distribution of borrowers reflected good penetration among borrowers of different income levels and businesses of different revenue sizes. Frost Bank made a relatively high level of community development loans in the assessment area.

In the Dallas AA, another area of concern to the commenter, Frost Bank showed good lending performance. The bank's lending activity reflected adequate responsiveness to

¹⁹ 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).

²⁰ The Frost Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation period for the Lending Test was from January 1, 2010, through December 31, 2011, except for community development loans, which had an evaluation period from August 8, 2008, through December 31, 2011. The evaluation period for the Investment Test and the Service Test was from August 8, 2008, through December 31, 2011.

²¹ The Frost Bank Evaluation included a full-scope review of the bank's assessment areas within the following Metropolitan Statistical Areas ("MSAs"): the Austin–Round Rock–San Marcos, Texas, MSA; the Dallas–Plano–Irving, Texas, Metropolitan Division ("Dallas AA"); the Fort Worth–Arlington, Texas, Metropolitan Division; the Houston–Sugar Land–Baytown, Texas, MSA ("Houston AA"); and the San Antonio–New Braunfels, Texas, MSA ("San Antonio AA"). A limited-scope review was conducted in the bank's assessment areas within the Brownsville–Harlingen, Texas, MSA; the Corpus Christi, Texas, MSA; and the McAllen–Edinburg–Mission, Texas, MSA, as well as in the Willacy County, Texas, assessment area.

assessment area credit needs, and the bank's geographic distribution of loans reflected good penetration throughout the assessment area. The bank's distribution of borrowers reflected good penetration among borrowers of different income levels and businesses of different revenue sizes. Frost Bank made a low level of community development loans in the assessment area.

Examiners found that Frost Bank had an excellent level of qualified community development investments and grants in its assessment areas.²² Examiners noted that Frost Bank's investments demonstrate excellent responsiveness to the most pressing credit and community development needs throughout its assessment areas. Frost Bank invested in small business investment companies, purchased mortgage-backed securities issued by the Government National Mortgage Association, and invested in mortgage revenue bonds issued by the Texas Department of Housing & Community Affairs that are targeted to LMI individuals.

In the Houston and Dallas AAs, Frost Bank's performance on the Investment Test was excellent. Frost Bank exhibited excellent responsiveness to credit and community development needs through its investment activities in these assessment areas, which included investments for affordable housing.

Examiners noted that Frost Bank's retail delivery systems were reasonably accessible to the geographies and individuals of different income levels. Examiners further noted that Frost Bank's opening and closing of branches did not adversely affect the accessibility of banking services to LMI geographies and that the banking services and business hours did not vary in a way that inconvenienced any portion of the bank's assessment areas, particularly LMI geographies and individuals. Examiners also noted that Frost Bank offered no- or low-cost deposit accounts and various alternative delivery systems. Examiners indicated that the bank overall was a leader in providing community development services that benefit LMI residents and small businesses of the assessment areas. Examiners noted that the bank's directors, officers, and staff members were involved in numerous organizations and activities that promote or facilitate affordable housing for LMI individuals, services for LMI individuals, and economic development and revitalization of LMI areas and were involved in financial literacy outreach efforts.

In the Houston and Dallas AAs, Frost Bank's performance on the Service Test was good. The bank's retail and community development services reflected good responsiveness to the needs of these assessment areas. The bank's delivery systems were reasonably accessible to the bank's geographies and to individuals of different income levels in these assessment areas. In the Dallas AA, Frost Bank was a leader in providing community development services; in the Houston AA, the bank provided a relatively high level of community development services.

Frost Bank's Efforts Since the 2013 CRA Evaluation

Frost Bank represents that, since the Frost Bank Evaluation, it has continued to help meet the credit needs of its assessment areas, including the needs of LMI communities and individuals within these areas. Frost Bank has made community development loans that promote affordable housing and that support organizations providing community services. Frost Bank has continued to purchase mortgage-backed securities secured by mortgage loans made to LMI borrowers and, since 2012, has made community development invest-

²² Frost Bank's performance in the San Antonio AA had the greatest impact on the Investment Test due to a higher concentration of deposits, branches, and combined HMDA and CRA small business lending than the other assessment areas.

ments in school bonds that fund economically disadvantaged school districts throughout Texas. Frost Bank has made donations to support CRA-qualified nonprofit organizations or other entities providing community development services in each of its assessment areas. Frost Bank has continued to provide a low-cost checking account and low-cost unsecured and secured home improvement loans for LMI individuals. The bank has provided financial education for youths, adults, and seniors and, beginning in 2013, has conducted educational events for LMI homeowners on home improvement, home improvement loan options, and the availability of utility bill assistance.

The Reserve Bank began a CRA examination of Frost Bank in the third quarter of 2015. Overall, examiners found that Frost Bank's CRA performance remained satisfactory, including in the Houston and Dallas AAs.²³

As noted above, in 2014, in connection with the Board's action on the WNB Applications, Cullen/Frost committed not to engage in any expansionary activities, including branching within its existing market areas, until such time that the Board has deemed Cullen/Frost to have clearly developed a policy to support future expansion in its compliance program, including fair lending, and to hire additional staff with requisite knowledge and experience to manage and control the bank's fair lending risk, which might be heightened by expansion (the "Commitments").²⁴ Under the Commitments, Cullen/Frost may apply to establish branches within existing market areas if the proposed branch would directly contribute to serving the needs of majority-minority census tracts.

Consistent with the Commitments, the proposed branches would increase the availability of banking services in minority neighborhoods. Both of the proposed branches would be located in low-income, majority-minority census tracts. Four of the six census tracts surrounding the census tract that would contain the Austin Branch are LMI tracts, and five of these are majority-minority census tracts. In the case of the San Antonio Branch, four of the seven census tracts surrounding the census tract that would contain the branch are LMI tracts, and all are majority-minority census tracts.

Cullen/Frost and Frost Bank have made improvements to the bank's compliance program, particularly its fair lending program. Frost Bank represents that the bank has strengthened its board and senior manager oversight of compliance, fair lending, and CRA risks. The bank has expanded its electronic fair lending data collection and conducts regular analyses to assess and monitor fair lending risks and trends. In addition, the bank has added staff in its Compliance Department and has increased the number of analysts that conduct fair lending analyses and manage fair lending data.

As part of the bank's wider marketing and branching efforts, Frost Bank has implemented plans to help serve the needs of historically underserved neighborhoods, focusing on majority-minority census tracts. Frost Bank has developed a marketing and outreach program designed to inform underserved individuals and communities of credit availability, increase outreach efforts with neighborhood groups in all of the bank's market areas, and target minority publications to increase lending to underserved individuals and communities. Frost Bank also has developed a branch strategy to help serve the credit needs of majority-minority areas. All of Frost Bank's branching activities proposed after entering into the Commitments have contributed to servicing the needs of minority neighborhoods in the bank's existing market areas; in 2015, Frost Bank established three new branches in

²³ The review period for the Lending Test, Investment Test, and the Service Test was January 1, 2012, through December 31, 2014.

²⁴ *Cullen/Frost Order* at 19 n.33. The commenter alleged that Cullen/Frost and Frost Bank are not in compliance with the Commitments.

the Dallas–Plano–Irving, Texas, Metropolitan Division, all of which were located in majority-minority census tracts.

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. As discussed above, the proposal would increase the availability of banking services in LMI and minority neighborhoods. Frost Bank proposes to offer its full array of products through each branch and to install an ATM at each branch to increase the availability of banking services at each location.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of Frost Bank under the CRA, the bank's records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Frost Bank, 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.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. The Board's approval is specifically conditioned on Frost Bank's compliance with all the commitments made to the Board in connection with the proposal as well as all conditions imposed in this order.²⁵ The conditions and commitments relied on by the Board are deemed to be conditions imposed in writing in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

Approval of these applications is also subject to the establishment of the proposed branches within one year of the date of this order, unless such period is extended by the Board or the Reserve Bank acting under authority delegated by the Board.

By order of the Board of Governors, effective March 14, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

²⁵ This order does not grant relief from the Commitments.

Order Issued Under International Banking Act

Unione di Banche Italiane, S.p.A.
Bergamo, Italy

*Order Approving the Establishment of a Representative Office
FRB Order No. 2016-01 (January 19, 2016)*

Unione di Banche Italiane, S.p.A. (“UBI”), Bergamo, Italy, a foreign bank within the meaning of the International Banking Act of 1978 (“IBA”), has applied under section 10(a) of the IBA¹ to establish a representative office in New York, New York. The IBA provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Daily News*, March 30, 2015). The time for submitting comments has expired, and the Board has considered all comments received.

UBI is organized as a joint stock corporation under Italian law with more than 147,000 shareholders.² UBI’s shares are widely held, and each shareholder holds less than 5 percent of UBI’s shares.

UBI, with total assets of approximately \$108 billion, is the fifth largest bank in Italy by asset size.³ UBI engages in a range of commercial and retail banking activities through its 1,560 domestic branches and eight bank subsidiaries located in Italy. Outside Italy, UBI operates representative offices in the People’s Republic of China (including Hong Kong SAR), Brazil, Russia, and India. UBI also has one banking subsidiary, UBI Banca Internazionale SA, located in Luxembourg. UBI has no operations in the United States.

The proposed representative office would act as a liaison between UBI’s customers and U.S. service providers and business contacts. The proposed representative office would also engage in other representational activities, including gathering information and conducting research.⁴

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside the United States, and (3) the foreign bank and any foreign bank parent are subject

¹ 12 U.S.C. § 3107(a).

² In October 2015, UBI converted from a cooperative bank into a joint stock corporation under Italian law operating pursuant to the new regulatory framework in Italy for the reform of cooperative banks with consolidated assets exceeding €8 billion. See Law No. 33 of March 24, 2015, converting Legislative Decree No. 3 of January 24, 2015. Although this change in corporate structure impacts shareholder rights—in particular, establishing the right to one vote for each ordinary share—no substantial impact is expected on UBI’s business model or operational activities.

³ Asset and ranking data are as of June 30, 2015.

⁴ A representative office may engage in representational and administrative functions in connection with the banking activities of the foreign bank, including soliciting new business for the foreign bank, conducting research, acting as a liaison between the foreign bank’s head office and customers in the United States, performing preliminary and servicing steps in connection with lending, and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity. 12 CFR 211.24(d)(1).

to comprehensive supervision on a consolidated basis by their home country supervisor.⁵ The Board also considers additional standards set forth in the IBA and Regulation K.⁶

As noted above, UBI engages directly in the business of banking outside the United States. UBI also has provided the Board with the information necessary to assess the application through submissions that address the relevant issues.

The Board has previously determined, in connection with applications involving other banks in Italy, that those banks were subject to comprehensive supervision on a consolidated basis by the Bank of Italy.⁷ As of November 4, 2014, UBI is subject to the direct prudential supervision of the European Central Bank within the context of the Single Supervisory Mechanism (“SSM”) because the total value of its assets exceeds €30 billion. The SSM is a system of financial supervision composed of the European Central Bank (“ECB”) and the national competent authorities of the participating Member States in which specific tasks concerning policies relating to the prudential supervision of credit institutions and the stability of the financial system within the Union and each Member State are specifically allocated between the ECB and the national competent authority.⁸ Under the SSM, the ECB has direct prudential supervisory responsibility for UBI, while the Bank of Italy, as the relevant national competent authority for UBI, retains supervisory authority over all other areas, including consumer protection and the prevention of money laundering and terrorist financing.

Under the SSM, a joint supervisory team composed of staff members from the ECB and the relevant national competent authorities is established for the consolidated supervision of each significant supervised entity or significant supervised group, such as UBI, in participating European Union member states. The responsibilities of these joint supervisory teams include implementation of the supervisory examination program approved by the ECB and of any ECB supervisory decisions concerning that entity or group; performance of the supervisory review and evaluation process required by European Union law;

⁵ 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and the relationships between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

⁶ See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). These standards include: whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. The Board may also, in the case of a foreign bank that presents a risk to the stability of the United States, take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress towards adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

⁷ See, e.g., *Banca Popolare di Vicenza S.C.p.A.* (order dated September 27, 2011), 97 *Federal Reserve Bulletin* 11 (3rd Quar. 2011); Board letter to Luigi L. De Ghenghi dated September 25, 2007 (comprehensive consolidated supervision for *Intesa Sanpaolo S.p.A.*); *Banca di Roma, S.p.A.*, 2002 WL 1848520 (2002); *Banca Intesa, S.p.A.*, 86 *Federal Reserve Bulletin* 433 (2000).

⁸ Information regarding the SSM is derived from Council Regulation 1024/2013, 2013 O.J. (L 287) 63 (EC); Regulation 468/2014 of the European Central Bank, 2014 O.J. (L 141) 1 (ECB); and Directive 2013/36/EU of the European Parliament and of the Council, 2013 O.J. (L 176) 338 (EU).

coordination with on-site inspection teams; and liaising with the national competent authorities where relevant.

Under the SSM, UBI is subject to regular on-site and off-site examinations; supervisory reviews, including stress tests; and supervision on a consolidated basis by the ECB. The ECB reviews compliance with all relevant European Union law, including directives concerning capital requirements as implemented by national legislation and European Union regulations. The ECB may also impose additional capital or liquidity requirements or other prudential measures that are provided for under applicable European Union law.⁹ In fulfilling their responsibilities under the SSM, the ECB and the relevant national competent authorities agree to provide information to each other in a timely and accurate manner, with regular access to updated information as necessary.

Based on all the facts of record, including the above information, the Board has determined that UBI is subject to comprehensive supervision on a consolidated basis by the ECB and the Bank of Italy acting through the SSM.

The Board has also considered the following additional standards set forth in the IBA and Regulation K: (1) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (2) the financial and managerial resources of the bank; (3) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; and (4) whether the bank's home country supervisor has consented to the establishment of the office.¹⁰

Italy is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with those recommendations, Italy has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Italy, and credit institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. UBI has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

UBI appears to have the experience and capacity to support the proposed representative office. In addition, UBI has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally. Taking into consideration UBI's record of operations in its home country, its overall financial resources, and its standing with its home country supervisors, financial and managerial factors are consistent with approval of the proposed representative office.

UBI has committed to make available to the Board such information on the operations of UBI and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, UBI has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for the disclo-

⁹ Articles 4(1)(f) and 16 of Council Regulation 1024/2013, 2013 O.J. (L 287) 63, 74, 81 (EC).

¹⁰ See 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2).

sure of such information. In addition, subject to certain conditions, the ECB and the Bank of Italy may share information on UBI's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that UBI has provided adequate assurances of access to any necessary information that the Board may request. In addition, the Bank of Italy and the ECB have no objection to the establishment of the proposed representative office.

The Board has also considered whether UBI's proposal would present a risk to the stability of the United States. The proposal would not appear to affect financial stability in the United States. In particular, the absolute and relative size of UBI in its home country; the scope of UBI's activities, including the types of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability; and the framework in place for supervising UBI in its home country do not appear to create significant risk to the financial stability of the United States. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record and subject to commitments made by UBI, the Board has determined that UBI's application to establish the proposed representative office should be, and hereby is, approved. Should any restrictions on access to information on the operations or activities of UBI and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by UBI or its affiliates with applicable federal statutes, the Board may require termination of any of UBI's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by UBI with the conditions imposed in this order and the commitments made to the Board in connection with this application.¹¹ For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order of the Board of Governors, effective January 19, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

¹¹ The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York or its agent, the New York State Department of Financial Services, to license the proposed office of UBI in accordance with any terms or conditions that they may impose.