



## Legal Developments: Third Quarter, 2021

### Order Issued Under Bank Holding Company Act

First Bank Corp.  
Fort Smith, Arkansas

*Order Approving the Acquisition of a Bank Holding Company*  
*FRB Order No. 2021-09 (July 9, 2021)*

First Bank Corp. (“FBC”), Fort Smith, Arkansas, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),<sup>1</sup> has requested the Board’s approval under section 3 of the BHC Act<sup>2</sup> to acquire Central Bancshares of Poteau, Inc. (“CBP”), a bank holding company, and thereby indirectly acquire The Central National Bank of Poteau (“Central”), both of Poteau, Oklahoma.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (86 *Federal Register* 22205 (April 27, 2021)).<sup>3</sup> The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

FBC, with consolidated assets of approximately \$2.3 billion, is the 451st largest insured depository organization in the United States. FBC controls approximately \$2.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>4</sup> FBC controls First National Bank of Fort Smith (“First National”), Fort Smith, Arkansas, which operates branches in Arkansas and Oklahoma, and Citizens Bank & Trust Company (“Citizens”), Van Buren, Arkansas, which operates branches in Arkansas only. First National has total assets of \$1.8 billion and Citizens has total assets of \$492.1 million.<sup>5</sup> First National is the 129th largest insured depository institution in Oklahoma, controlling deposits of approximately \$115.3 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.<sup>6</sup>

CBP, with total assets of approximately \$305.7 million, is the 2471st largest insured depository organization in the United States. CBP controls approximately \$280.7 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Central operates in Oklahoma only. Central is the 83rd largest insured depository institution in Oklahoma, controlling

<sup>1</sup> 12 U.S.C. § 1841 *et seq.*

<sup>2</sup> 12 U.S.C. § 1842.

<sup>3</sup> 12 CFR 262.3(b).

<sup>4</sup> Consolidated asset and national deposit, ranking, and market share data are as of December 31, 2020.

<sup>5</sup> Total assets are as of March 31, 2021.

<sup>6</sup> State deposit ranking and deposit data are as of June 30, 2020.

deposits of approximately \$250.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, FBC would become the 406th largest insured depository organization in the United States, with consolidated assets of approximately \$2.6 billion, which would represent less than 1 percent of the total assets of insured depository organizations in the United States. FBC would control total consolidated deposits of approximately \$2.3 billion, which would represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Oklahoma, First National would become the 52nd largest insured depository institution, controlling deposits of approximately \$365.3 million, which would represent less than 1 percent of the total deposits of insured depository institutions in that state.

### Interstate and Deposit Cap Analyses

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.<sup>7</sup> The Board (1) may not approve an application that would permit an out-of-state bank holding company or bank to acquire a bank in a host state if the target bank has not been in existence for the lesser of the state statutory minimum period of time or five years;<sup>8</sup> (2) must take into account the record of the applicant bank under the Community Reinvestment Act of 1977 (“CRA”)<sup>9</sup> and the applicant’s record of compliance with applicable state community reinvestment laws;<sup>10</sup> and (3) may not approve an interstate application if the bank holding company or resulting bank, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company or resulting bank, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in the target bank’s home state or in any state in which the acquirer and target have overlapping banking operations.<sup>11</sup>

For purposes of the BHC Act, the home state of FBC is Arkansas. Central is located only in Oklahoma. FBC is well capitalized and well managed under applicable law. First National and Citizens each have a “Satisfactory” rating under the CRA, and neither of the jurisdictions in which FBC operates has a state community reinvestment law that applies to this proposal. There are no minimum age requirements under the laws of Oklahoma that apply to FBC’s acquisition of Central. Central has been in existence for more than five years.

On consummation of the proposed transaction, FBC would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Oklahoma, the only state in which FBC and CBP have overlapping banking opera-

<sup>7</sup> 12 U.S.C. § 1842(d)(1)(A). A bank holding company’s home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. *See* 12 U.S.C. § 1841(o)(4)(C).

<sup>8</sup> 12 U.S.C. § 1842(d)(1)(B).

<sup>9</sup> 12 U.S.C. § 2901 *et seq.*

<sup>10</sup> 12 U.S.C. § 1842(d)(3).

<sup>11</sup> 12 U.S.C. § 1842(d)(2)(A) and (B). For purposes of section 3(d) of the BHC Act, the acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or branch. The Board considers a bank to be located in any state in which the bank is chartered, headquartered, or operates a branch. *See* 12 U.S.C. § 1841(o)(4)-(7).

tions, imposes a 20 percent limit on the total amount of in-state deposits that a single banking organization may control.<sup>12</sup> The combined organization would control less than 1 percent of the total amount of in-state deposits of insured depository institutions in Oklahoma. Accordingly, in light of all the facts of record, the Board is not precluded from approving the proposal under section 3(d) of the BHC Act.

### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.<sup>13</sup> The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.<sup>14</sup>

FBC and CBP have subsidiary banks that compete directly in the Fort Smith, Arkansas, banking market (“Fort Smith market”).<sup>15</sup> The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the relative share of total deposits in insured depository institutions in the market (“market deposits”) that FBC would control;<sup>16</sup> the concentration level of market deposits and the increase in this level, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice (“DOJ”) Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);<sup>17</sup> the number of competitors that would remain in the market; and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Fort Smith market. On consummation, the Fort Smith market would remain moderately concentrated as measured by the

<sup>12</sup> Okla. Stat. tit. 6, § 502(C).

<sup>13</sup> 12 U.S.C. § 1842(c)(1)(A).

<sup>14</sup> 12 U.S.C. § 1842(c)(1)(B).

<sup>15</sup> The Fort Smith market is defined, in Arkansas, as Crawford, Franklin, and Sebastian counties, as well as the city of Mansfield, and, in Oklahoma, as Le Flore and Sequoyah counties, as well as the Keota Census County Division (“CCD”), McCurtain CCD, and Stigler CCD of Haskell County.

<sup>16</sup> Local deposit and market share data are as of June 30, 2020, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

<sup>17</sup> In applying the DOJ Bank Merger Guidelines issued in 1995 (*see* <https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995>), the Board looks to the DOJ’s Horizontal Merger Guidelines, issued in 1992 and amended in 1997, for the characterization of a market’s concentration. *See* <https://www.justice.gov/atr/horizontal-merger-guidelines-0>. Under these Horizontal Merger Guidelines, which were in effect prior to 2010, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The DOJ has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (*see* <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

HHI, according to the DOJ Bank Merger Guidelines, and numerous competitors would remain in the market.<sup>18</sup>

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

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

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

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved, the effectiveness of the institutions in combatting money laundering, and any public comments on the proposal.<sup>19</sup> In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as the impact of the proposed funding of the transaction and any public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

FBC, CBP, and their respective subsidiary depository institutions are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company acquisition that is structured as a cash purchase.<sup>20</sup> The capital, asset quality, earnings, and liquidity of FBC and CBP are consistent with approval, and FBC and CBP appear to have adequate resources to absorb the

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<sup>18</sup> FBC is the largest depository organization in the Fort Smith market, controlling approximately \$1.6 billion in deposits, which represent 26.4 percent of market deposits. CBP is the 6th largest depository organization in the market, controlling deposits of approximately \$249.9 million, which represent 4.1 percent of market deposits. On consummation of the proposed transaction, FBC would remain the largest depository organization in the market, controlling deposits of approximately \$1.9 billion, which would represent 30.5 percent of market deposits. The HHI for the Fort Smith market would increase by 214 points to 1446, and 24 competitors would remain in the market.

<sup>19</sup> 12 U.S.C. § 1842(c)(2), (5), and (6).

<sup>20</sup> FBC would effect the holding company acquisition by merging CBP with and into CNBP Acquisition, Inc., a newly formed subsidiary of FBC ("Merger Sub"), with Merger Sub surviving the merger as a subsidiary of FBC. At the time of the merger, each share of CBP common stock would be canceled and converted into a right to receive cash from FBC. Following the holding company acquisition, Merger Sub would merge with and into FBC, with FBC surviving the merger as the parent of Central. FBC would continue to operate Central as a separate standalone bank. FBC has the financial resources to effect the proposed acquisition and mergers.

related costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of FBC, CBP, and their respective subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by FBC; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; and the public comment received on the proposal.

FBC, CBP, and each of their respective subsidiary depository institutions are considered to be well managed. FBC's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and FBC's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered FBC's plans for implementing the proposal. FBC has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. In addition, FBC's management has the experience and resources to operate the resulting organization in a safe and sound manner.

Based on all of the facts of record, including FBC's supervisory record, managerial and operational resources, and plans for operating the combined organization after consummation, the Board determines that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of FBC and CBP in combatting money-laundering activities, are consistent with approval.

### **Convenience and Needs Considerations**

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.<sup>21</sup> In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of these communities, and places particular emphasis on the records of the relevant depository institutions under the 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 the institutions' safe and sound operation,<sup>22</sup> and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.<sup>23</sup>

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the

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<sup>21</sup> 12 U.S.C. § 1842(c)(2).

<sup>22</sup> 12 U.S.C. § 2901(b).

<sup>23</sup> 12 U.S.C. § 2903.

supervisory views of examiners, other supervisory information, information provided by the applicant, and public comments on the proposal. The Board also may consider the institution's business model and marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of First National, Citizens, and Central; the fair lending and compliance records of these banks; the supervisory views of the Office of the Comptroller of the Currency ("OCC") and the Federal Reserve Bank of St. Louis ("Reserve Bank"); confidential supervisory information; information provided by FBC; and the public comment received on the proposal.

#### *Public Comment on the Proposal*

The Board received one comment on the proposal. The commenter objected to the proposal, alleging that in 2019, as a result of the bank's disparate marketing, First National made fewer home loans in Arkansas to African American individuals as compared to white individuals. The commenter also alleged that in 2019, as a result of the bank's marketing, Central made no home loans in Oklahoma to African American individuals but made some loans to white individuals.<sup>24</sup> In addition, the commenter asserted that the proposal has no public benefit.

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

Through its branches in Arkansas and Oklahoma, First National offers consumer and commercial loan and deposit products, individual retirement accounts, and business banking products. These products and services include a wide range of checking, savings, and money market deposit accounts, as well as credit products, such as home equity, automobile, construction, and commercial loans. Through its branches in Oklahoma, Central offers a variety of commercial and consumer loan products, including commercial and home mortgage loans. Central also provides a variety of deposit services, including checking, savings, and money market deposit accounts, individual retirement accounts, and certificates of deposit, as well as business checking services. Both banks offer internet banking and mobile banking services.

In response to the comment, FBC asserts that First National and Central each have a history of supporting and servicing their entire market areas, including minority communities. FBC represents that neither First National nor Central considers racial makeup when determining the medium or location of their respective advertisements. FBC represents that the reasons for denials of loan applications submitted by African American customers were credit- or eligibility-related, were consistent with standard underwriting procedures, and were not the result of disparate or other marketing practices. FBC represents that each bank regularly undergoes fair lending reviews by external auditors.

According to FBC, First National demonstrates extensive involvement in lower-income geographies. FBC represents that First National promotes and contributes to a program in area schools, including low-income schools, to improve the fiscal and economic literacy of young students. FBC also represents that First National's 2020 CRA examination noted that the bank had provided numerous qualified grants and donations to community development organizations. In addition, FBC represents that Central provides leadership and

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<sup>24</sup> The data cited by the commenter appears to correspond to publicly available 2019 data reported by First National and Central under the Home Mortgage Disclosure Act of 1975 ("HMDA"). 12 U.S.C. § 2801 *et seq.*

monetary support for community organizations and activities and that the majority of the bank's community involvement activities benefit underprivileged citizens.

#### *Records of Performance under the CRA*

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA evaluation and the supervisory views of relevant federal supervisors, which in this case are the OCC with respect to First National and Central and the Reserve Bank with respect to Citizens.<sup>25</sup> In addition, the Board considers information provided by the applicant and by public commenters.

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.<sup>26</sup> An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test ("Lending Test"), an investment test ("Investment Test"), and a service test ("Service Test") to evaluate the performance of large banks, such as First National, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under the HMDA, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is evaluated based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's CRA assessment areas ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;<sup>27</sup> (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.<sup>28</sup> The Investment Test evaluates the number and amounts of qualified investments that benefit the institution's AAs, and the Service Test evaluates the availability and effectiveness of the institution's systems for delivering retail banking services and the extent and innovativeness of the institution's community development services.<sup>29</sup>

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<sup>25</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48,506, 48,548 (July 25, 2016).

<sup>26</sup> 12 U.S.C. § 2906.

<sup>27</sup> Examiners also consider the number and amounts of small business and small farm loans made 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).

<sup>28</sup> See 12 CFR 228.22(b).

<sup>29</sup> See 12 CFR 228.21 *et seq.*

Federal financial supervisors apply a Lending Test and a community development test (“Community Development Test”) to evaluate the performance of an intermediate small bank, such as Citizens, in helping to meet the credit needs of the communities it serves. The Community Development Test evaluates the number and amounts of the institution’s community development loans and qualified investments; the extent to which the institution provides community development services; and the institution’s responsiveness through such activities to community development lending, investment, and service needs.<sup>30</sup> Small banks, such as Central, are subject only to a Lending Test.<sup>31</sup>

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial, ethnic, or gender groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution’s credit decisions may not be available from public HMDA data.<sup>32</sup> Consequently, the Board evaluates such disparities in the context of other information regarding the lending record of an institution.

#### *CRA Performance of First National*

First National was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the OCC, as of April 27, 2020 (“First National Evaluation”).<sup>33</sup> The bank received “High Satisfactory” ratings for the Lending Test, the Investment Test, and the Service Test.<sup>34</sup>

With respect to the Lending Test, examiners found that First National’s lending levels reflected good responsiveness to the Fort Smith AR-OK AA’s credit needs. Examiners also found that First National exhibited a good and adequate geographic distribution of loans, respectively, in the Fort Smith AR-OK AA and more broadly in the state of Arkansas. Examiners determined that First National exhibited an adequate and poor distribution, respectively, of loan amounts among individuals of different income levels and businesses of different sizes in the Fort Smith AR-OK AA and the state of Arkansas. Examiners found that First National made a relatively high level of community development loans in the Fort Smith AR-OK AA and the state of Arkansas.

With respect to the Investment Test, examiners found that First National had a significant and adequate level, respectively, of qualified community development investments in the Fort Smith AR-OK AA and the state of Arkansas. With respect to the Service Test, examiners found that First National provided a relatively high and adequate level, respectively, of community development services in the Fort Smith AR-OK AA and the state of Arkansas.

<sup>30</sup> See 12 CFR 228.26(c).

<sup>31</sup> 12 CFR 228.26(a).

<sup>32</sup> Other information 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.

<sup>33</sup> The First National Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loan data from January 1, 2017, through December 31, 2019. Examiners also reviewed community development activities from January 1, 2017, through December 31, 2019.

<sup>34</sup> The First National Evaluation involved a full-scope review of the bank’s activities in the Fort Smith, Arkansas-Oklahoma multi-state metropolitan statistical area (“MMSA”) AA (“Fort Smith AR-OK AA”). In addition, the First National Evaluation involved a full-scope review of the bank’s performance in Arkansas, which was based primarily on the bank’s Fayetteville-Springdale-Rogers, Arkansas metropolitan statistical area (“MSA”) AA. Examiners noted that the Fort Smith AR-OK AA rating carried greater weight because this AA represented the bank’s most significant market in terms of deposit concentration, branch distribution, and reportable loans.



### *CRA Performance of Citizens*

Citizens was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the Reserve Bank, as of July 9, 2018 (“Citizens Evaluation”).<sup>35</sup> The bank received a “Satisfactory” rating on the Lending Test and an “Outstanding” rating on the Community Development Test.<sup>36</sup>

With respect to the Lending Test, examiners found that a majority of Citizens’ loans were made in the bank’s AA. Examiners also found that the bank’s LTD ratio was reasonable given Citizens’ size, financial condition, and the credit needs of the bank’s AA. In addition, examiners found that the bank’s geographic distribution of loans reflected reasonable dispersion throughout the bank’s AA and that the bank’s loan distribution by borrower profile reflected excellent penetration among businesses of different revenue sizes and individuals of different income levels, including LMI individuals.

With respect to the Community Development Test, examiners determined that Citizens’ overall community development performance demonstrated excellent responsiveness to the community development needs of the bank’s AA, when considering the bank’s capacity and the need and availability of such opportunities for community development. Examiners found that Citizens’ community development activities were spread throughout the AA. Examiners noted that the bank had responded to the community development needs of its AA through community development loans, qualified investments, and community development services.

### *CRA Performance of Central*

Central received an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the OCC, as of February 11, 2019 (“Central Evaluation”).<sup>37</sup> The bank received a “Satisfactory” rating for the Lending Test.<sup>38</sup>

Examiners determined that a substantial majority of Central’s residential real estate and commercial loans were made in the bank’s AA. Examiners found that Central’s LTD ratio was reasonable, based on the bank’s performance context and lending opportunities within its designated AA. Examiners determined that Central’s distribution of residential real estate and commercial loans reflected a reasonable penetration among borrowers of different income levels and businesses with different revenue levels. Examiners also determined that the geographic distribution of the bank’s residential real estate and commercial loans reflected a reasonable dispersion throughout the bank’s AA.

### *Additional Supervisory Views*

In its review of the proposal, the Board consulted with the OCC regarding the CRA, consumer compliance, and fair lending records of First National and Central. The Board

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<sup>35</sup> The Citizens Evaluation was conducted using Intermediate Small Institution CRA Examination Procedures. Examiners reviewed loan data from January 1, 2016, through December 31, 2016; loan-to-deposit (“LTD”) ratio data from September 30, 2014, through March 31, 2018; and responses to written CRA complaints and community development activities from July 14, 2014, through July 8, 2018.

<sup>36</sup> The Citizens Evaluation involved a full-scope review of the bank’s activities in its sole AA: Crawford and Sebastian counties, both in northwestern Arkansas, which comprised the Arkansas side of the Fort Smith AR-OK MMSA.

<sup>37</sup> The Central Evaluation was conducted using Small Bank CRA Examination Procedures. Examiners reviewed all residential real estate loan originations and a random sample of commercial loan originations from January 2, 2016, through December 31, 2018.

<sup>38</sup> The Central Evaluation reviewed the bank’s activities in the bank’s sole AA: Le Flore (Fort Smith AR-OK MMSA) and Haskell (non-MSA) counties, both of Oklahoma.

also considered the results of the most recent consumer compliance examinations of First National, Citizens, and Central, which included reviews of the banks' compliance management programs and compliance with consumer protection laws and regulations.

The Board has taken the foregoing consultations and examinations into account in evaluating the proposal, including in considering whether FBC has the experience and resources to ensure that First National, Citizens, and Central would help meet the credit needs of the communities to be served following consummation of the proposed transaction.

#### *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. FBC represents that First National and Central would work closely with members of their respective communities to offer products and services tailored to the needs of these communities. FBC represents that consummation of the proposal would provide customers of Central with access to ATMs at all of the locations within the FBC organization. FBC also represents that, within one to two years, Central would be able to offer the same ancillary products and services as those currently offered by First National and customers would be able to utilize all of the locations of FBC. FBC represents that FBC, First National, and Central do not anticipate significant changes in their respective product offerings or branch networks following consummation of the proposal.

#### *Conclusion on Convenience and Needs Considerations*

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by FBC, 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 determines that the convenience and needs considerations are consistent with approval.

### **Financial Stability Considerations**

Section 3 of the BHC Act requires the Board to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.”<sup>39</sup>

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.<sup>40</sup> These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opacity and complexity of an institution's internal

<sup>39</sup> 12 U.S.C. § 1842(c)(7).

<sup>40</sup> Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage on the broader economy.<sup>41</sup>

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in total assets, or that result in a firm with less than \$100 billion in total assets, generally are not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.<sup>42</sup>

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than \$10 billion in total assets and a pro forma organization of less than \$100 billion in total assets. Both the acquirer and the target are predominantly engaged in retail and commercial banking activities.<sup>43</sup> The pro forma organization would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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

## Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.<sup>44</sup> In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on

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<sup>41</sup> For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

<sup>42</sup> See *People's United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

<sup>43</sup> FBC and CBP offer a range of retail and commercial banking products and services. FBC has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

<sup>44</sup> The commenter requested that the Board hold public hearings on the proposal. Under section 3(b) of the BHC Act, the Board must hold a public hearing on a proposal if the appropriate supervisory authorities for the acquiring bank or the bank to be acquired make a timely written recommendation of disapproval of the proposal. 12 U.S.C. § 1842(b); see also 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also, in its discretion, may hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and would be clarified by a public hearing. In addition, the request does not demonstrate why written comments do not present the commenter's views adequately or why a hearing 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 is not required or warranted in this case. Accordingly, the request for public hearings on the proposal is denied.

compliance by FBC with all the conditions imposed in this order and on any commitments made to the Board in connection with the proposal. The Board's approval also is conditioned on receipt by FBC of all required regulatory approvals. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective July 9, 2021.

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

Michele Taylor Fennell  
*Deputy Associate Secretary of the Board*

## Order Issued Under Bank Holding Company Act, Bank Merger Act, and Federal Reserve Act

SmartFinancial, Inc.  
Knoxville, Tennessee

*Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches*  
*FRB Order No. 2021-10 (August 17, 2021)*

SmartFinancial, Inc. (“SmartFinancial”), Knoxville, Tennessee, a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”),<sup>1</sup> has requested the Board’s approval under section 3 of the BHC Act<sup>2</sup> to merge with Sevier County Bancshares, Inc. (“Sevier”) and thereby indirectly acquire its subsidiary state nonmember bank, Sevier County Bank, both of Sevierville, Tennessee. In addition, SmartFinancial’s subsidiary state member bank, SmartBank, Pigeon Forge, Tennessee, has requested the Board’s approval to merge with Sevier County Bank pursuant to section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”),<sup>3</sup> with SmartBank as the surviving entity. SmartBank also has applied under section 9 of the Federal Reserve Act (“FRA”)<sup>4</sup> to establish and operate branches at the locations of the main office and branches of Sevier County Bank.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (86 *Federal Register* 26515 (May 14, 2021)) in accordance with the Board’s Rules of Procedure.<sup>5</sup> The time for submitting comments has expired, and no comments on the proposal were received. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation (“FDIC”).

SmartFinancial, with consolidated assets of approximately \$3.6 billion, is the 337th largest insured depository organization in the United States, controlling approximately \$3.1 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>6</sup> SmartFinancial controls SmartBank, which operates in Tennessee, Alabama, and Florida. SmartBank is the 15th largest insured depository institution in Tennessee, controlling deposits of approximately \$1.8 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Sevier, with consolidated assets of approximately \$452.4 million, is the 1969th largest insured depository organization in the United States, controlling approximately \$410 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Sevier controls Sevier County Bank, which operates in Tennessee and Virginia. Sevier County Bank is the 71st largest insured depository institution in Tennessee, controlling deposits of approxi-

<sup>1</sup> 12 U.S.C. § 1841 *et seq.*

<sup>2</sup> 12 U.S.C. § 1842.

<sup>3</sup> 12 U.S.C. § 1828(c).

<sup>4</sup> 12 U.S.C. § 321. These locations are listed in the [Appendix](#).

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

<sup>6</sup> Consolidated asset and national deposit, ranking, and market-share data are as of March 31, 2021, and state deposit, ranking, and market-share data are as of June 30, 2020, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

mately \$336 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, SmartFinancial would become the 313th largest insured depository organization in the United States, with consolidated assets of approximately \$4.0 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. SmartFinancial would control consolidated deposits of approximately \$3.5 billion, which represent less than 1 percent of the total deposits of insured depository institutions in the United States. SmartBank would become the 14th largest insured depository organization in Tennessee, controlling deposits of approximately \$2.2 billion, which represent approximately 1.1 percent of the total amount of deposits of insured depository institutions in that state.

### Interstate and Deposit Cap Analyses

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction would be prohibited under state law.<sup>7</sup> Similarly, section 44 of the Federal Deposit Insurance Act (“FDI Act”) generally provides that, if certain conditions are met, the Board may approve an application by a bank to engage in an interstate merger transaction with a bank that has a different home state without regard to whether the transaction would be prohibited under state law, provided that the resulting bank would be well capitalized and well managed.<sup>8</sup> The Board may not approve under either provision an application that would permit an out-of-state bank holding company or out-of-state bank to acquire a bank in a host state if the target bank has not been in existence for the lesser of the state statutory minimum period of time or five years.<sup>9</sup> In addition, the Board may not approve an interstate application under these provisions if the bank holding company or resulting bank controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company or resulting bank, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.<sup>10</sup> Moreover, the Bank Merger Act includes a prohibition on approval of interstate transactions where the resulting insured depository institution, together with its insured depository institution affiliates, controls or, upon consummation of the proposed transaction, would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.<sup>11</sup>

<sup>7</sup> 12 U.S.C. § 1842(d)(1)(A).

<sup>8</sup> 12 U.S.C. § 1831u(a)(1).

<sup>9</sup> 12 U.S.C. § 1842(d)(1)(B); 12 U.S.C. § 1831u(a)(5).

<sup>10</sup> 12 U.S.C. § 1842(d)(2)(A) and (B); 12 U.S.C. § 1831u(b)(2)(A) and (B). The acquiring and target organizations have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch.

<sup>11</sup> 12 U.S.C. § 1828(c)(13).

For purposes of these provisions, the home state of SmartFinancial is Tennessee.<sup>12</sup> The home state of SmartBank also is Tennessee.<sup>13</sup> The home state of Sevier County Bank is Tennessee, and Sevier County Bank is located in Tennessee and Virginia. SmartFinancial, SmartBank, and Sevier County Bank are well capitalized and well managed under applicable law, and SmartBank also would be well capitalized and well managed upon consummation of the proposal. Sevier County Bank has been in existence for more than five years, and SmartBank has a “Satisfactory” rating under the Community Reinvestment Act of 1977 (“CRA”).<sup>14</sup>

On consummation of the proposed transaction, SmartFinancial would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Tennessee imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.<sup>15</sup> The combined organization would control approximately 1.1 percent of the total amount of deposits of insured depository institutions in Tennessee. Accordingly, in light of all the facts of record, the Board is not precluded from approving the proposal under section 3(d) of the BHC Act, section 44 of the FDI Act, or the interstate provisions of the Bank Merger Act.

### Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.<sup>16</sup> The BHC Act and the Bank Merger Act also prohibit the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.<sup>17</sup>

SmartFinancial and Sevier have subsidiary banks that compete directly in the Knoxville Area, Tennessee, banking market (“Knoxville market”) and the Sevierville Area, Tennessee, banking market (“Sevierville market”).<sup>18</sup> The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in insured depository institutions in the markets (“market deposits”) that SmartFinancial would control,<sup>19</sup> the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the

<sup>12</sup> 12 U.S.C. § 1841(o)(4). A bank holding company’s home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

<sup>13</sup> 12 U.S.C. § 1841(o)(4); 12 U.S.C. § 1831u(g)(4). A state bank’s home state is the state by which the bank is chartered.

<sup>14</sup> 12 U.S.C. § 2901 *et seq.* The states in which SmartBank operates do not have community reinvestment laws.

<sup>15</sup> Tenn. Code Ann. § 45-2-1404.

<sup>16</sup> 12 U.S.C. § 1842(c)(1)(A); 12 U.S.C. § 1828(c)(5)(A).

<sup>17</sup> 12 U.S.C. § 1842(c)(1)(B); 12 U.S.C. § 1828(c)(5)(B).

<sup>18</sup> The Knoxville market is defined as Anderson, Blount, Knox, Loudon, Morgan, Roane, and Union counties; Grainger County excluding District 5 in eastern Grainger County; Jefferson County excluding Districts 3, 8, and 9 in northern and eastern Jefferson County; and Districts 6 and 9 in western Sevier County; all in Tennessee. The Sevierville market is defined as Cocke County, District 8 in eastern Jefferson County, and Sevier County excluding Districts 6 and 9 in western Sevier County; all in Tennessee.

<sup>19</sup> Deposit and market share data are as of June 30, 2020, and unless otherwise noted, are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks.

Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”),<sup>20</sup> and other characteristics of each market.

#### *Banking Market within Established Guidelines*

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Knoxville market. On consummation of the proposal, the Knoxville market would remain moderately concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in this market would be small, and numerous competitors would remain.<sup>21</sup>

#### *Banking Market Warranting Special Scrutiny*

The structural effects that consummation of the proposal would have in the Sevierville market warrant a detailed review because when using initial competitive screening data, the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines and Board precedent.

SmartBank is the second largest depository institution in the Sevierville market, controlling approximately \$661.5 million in deposits, which represent 19.9 percent of market deposits. Sevier County Bank is the fourth largest depository institution in the market, controlling approximately \$296.5 million in deposits, which represent 8.9 percent of market deposits. On consummation of the proposal, SmartBank would become the largest depository institution in the Sevierville market, controlling approximately \$957.9 million in deposits, which would represent approximately 28.8 percent of market deposits. The HHI in this market would increase 354 points, from 1620 to 1974.

The Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Sevierville market.<sup>22</sup> In particular, three credit unions exert a competitive influence in the Sevierville market. Each institution offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that

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*See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984).* Thus, the Board regularly has included thrift deposits in market share calculations on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).*

<sup>20</sup> In applying the DOJ Bank Merger Guidelines issued in 1995 ([see https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995](https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995)), the Board looks to the DOJ’s Horizontal Merger Guidelines issued in 1992 and amended in 1997, for the characterization of a market’s concentration. *See https://www.justice.gov/atr/horizontal-merger-guidelines-0.* Under these Horizontal Merger Guidelines, which were in effect prior to 2010, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The DOJ has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 ([see https://www.justice.gov/atr/horizontal-merger-guidelines-08192010](https://www.justice.gov/atr/horizontal-merger-guidelines-08192010)), the DOJ has confirmed that its Bank Merger Guidelines were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

<sup>21</sup> SmartFinancial operates the 11th largest depository institution in the Knoxville market, controlling deposits of approximately \$390 million, which represent approximately 2.0 percent of market deposits. Sevier operates the 32nd largest depository institution in the market, controlling deposits of approximately \$39 million, which represent approximately 0.2 percent of market deposits. On consummation of the proposed transaction, SmartFinancial would remain the 11th largest depository organization in the market, controlling deposits of approximately \$429 million, which represent approximately 2.2 percent of market deposits. The HHI for the Knoxville market would increase by 1 point to 1113, and 41 competitors would remain in the market.

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



include almost all of the residents in the relevant banking market.<sup>23</sup> The Board finds that the deposits of credit unions that exhibit these characteristics should be included at a 50-percent weight in calculating an estimate of the credit union's market influence (each a "qualifying credit union"). This weighting considers the limited lending done by credit unions to small businesses relative to commercial banks' lending levels. After including qualifying credit unions, SmartFinancial would control approximately 27.7 percent of market deposits, and the HHI would increase by 329 points, from 1509 to 1838.

The Board has also examined other aspects of the structure of the Sevierville market that could mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Sevierville market. After consummation of the proposal, thirteen depository institutions, including the qualifying credit unions, would remain in the market. These include, apart from SmartBank, one depository institution that would control more than 25 percent of market deposits and one depository institution that would control more than 15 percent of market deposits. The Sevierville market is also an attractive market for banking service providers. Compared to similar markets, the Sevierville market has above average deposits per branch, and since 2016 has experienced above average growth in deposits, income, and population. Banks have either entered or opened branches in the market each year since 2018. The presence of numerous competitors and attractiveness of the market for entry and expansion suggest that SmartFinancial would have limited ability unilaterally to offer less attractive terms to consumers and that competitors would be able to exert competitive pressure on SmartFinancial in the Sevierville market.

#### *Conclusion Regarding Competitive Effects*

The DOJ conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in 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, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in banking markets in which SmartFinancial and Sevier compete directly, or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

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

In reviewing a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved, the effectiveness of the institutions in combatting money laundering.<sup>24</sup> In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation,

<sup>23</sup> The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. See, e.g., *Huntington Bancshares Incorporated*, FRB Order No. 2016-13 (July 29, 2016); *BB&T Corporation*, FRB Order No. 2015-18 (July 7, 2015); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

<sup>24</sup> 12 U.S.C. § 1842(c)(2), (5), and (6); 12 U.S.C. § 1828(c)(5) and (11). Where applicable, the Board also considers any timely substantive comments on the proposal and, in its discretion, may consider any untimely substantive comments on the proposal.

the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as the impact of the proposed funding of the transaction. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

SmartFinancial, Sevier, and their subsidiary depository institutions are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a share exchange, with a subsequent merger of the subsidiary banks.<sup>25</sup> The capital, asset quality, earnings, and liquidity of SmartFinancial and Sevier are consistent with approval, and SmartFinancial and Sevier appear to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of SmartFinancial, Sevier, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by SmartFinancial; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

SmartFinancial, Sevier, and their subsidiary depository institutions are each considered to be well managed. The combined organization's proposed directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and the proposed risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered SmartFinancial's plans for implementing the proposal. SmartFinancial has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. In addition, SmartFinancial's management has the experience and resources to ensure that the combined organization would operate in a safe and sound manner.

Based on all the facts of record, including SmartFinancial's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board determines that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal—as well as the record of effectiveness of SmartFinancial and Sevier in combatting money-laundering activities—are consistent with approval.

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<sup>25</sup> SmartFinancial would effect the holding company acquisition by merging Sevier with and into SmartFinancial, with SmartFinancial as the surviving entity. At the time of the merger of Sevier into SmartFinancial, each share of Sevier common stock would be converted into a right to receive SmartFinancial common stock. Each holder of fewer than 20,000 shares of Sevier common stock may elect to receive cash. Immediately following the holding company merger, Sevier County Bank would merge with and into SmartBank, with SmartBank as the surviving entity. SmartFinancial has the financial resources to effect the proposed transaction.

### Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.<sup>26</sup> In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of these communities, and places particular emphasis on the records of the relevant depository institutions under the 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 the institutions' safe and sound operation,<sup>27</sup> and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.<sup>28</sup>

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicant.<sup>29</sup> The Board also may consider the acquiring institution's business model and marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of SmartBank and Sevier County Bank, the fair lending and compliance records of both banks, the supervisory views of the Federal Reserve Bank of Atlanta ("Reserve Bank") with respect to SmartBank and the FDIC with respect to Sevier County Bank, confidential supervisory information, and information provided by SmartFinancial.

#### *Records of Performance under the CRA*

In evaluating the convenience and needs factor and the CRA performance of an institution, the Board generally considers the institution's most recent CRA evaluation, as well as information and supervisory views provided by the appropriate federal supervisors.<sup>30</sup> The Board also considers information provided by the applicant and, where applicable and as appropriate, by any public commenters.

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.<sup>31</sup> An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

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<sup>26</sup> 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 1828(c)(5).

<sup>27</sup> 12 U.S.C. § 2901(b).

<sup>28</sup> 12 U.S.C. § 2903.

<sup>29</sup> As noted above, where applicable, the Board also considers any timely substantive comments on the proposal and, in its discretion, may consider any untimely substantive comments on the proposal.

<sup>30</sup> See *Interagency Questions and Answers Regarding Community Reinvestment*, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

<sup>31</sup> 12 U.S.C. § 2906.

In general, federal financial supervisors apply a lending test (“Lending Test”) and a community development test (“Community Development Test”) to evaluate the performance of an intermediate small bank, such as SmartBank, in helping to meet the credit needs of the communities it serves. The Lending Test specifically evaluates an institution’s lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution’s data reported under the Home Mortgage Disclosure Act of 1975,<sup>32</sup> automated loan reports, and other reports generated by the institution, in order to assess an institution’s lending activities with respect to borrowers and geographies of different income levels. The institution’s lending performance is evaluated based on the institution’s (1) loan-to-deposit ratio and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments; (2) percentage of loans and, as appropriate, other lending-related activities located in the bank’s assessment areas (“AAs”); (3) record of lending to, and, as appropriate, engaging in other lending-related activities for, borrowers of different income levels and businesses and farms of different sizes; (4) geographic distribution of loans; and (5) record of taking action, if warranted, in response to written complaints about the institution’s performance in helping to meet credit needs in the bank’s AAs.<sup>33</sup> The Community Development Test evaluates the number and amounts of the institution’s community development loans and qualified investments; the extent to which the institution provides community development services; and the institution’s responsiveness through such activities to community development lending, investment, and service needs.<sup>34</sup> Small institutions, such as Sevier County Bank, are subject only to the Lending Test.<sup>35</sup>

#### *CRA Performance of SmartBank*

SmartBank was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the Reserve Bank, as of August 5, 2019 (“SmartBank Evaluation”).<sup>36</sup> SmartBank received a “Satisfactory” rating for both the Lending and Community Development Tests.

Examiners found that the majority of SmartBank’s loans were made in the bank’s AAs. Examiners noted that the bank’s geographic distribution of loans reflected reasonable dispersion throughout the bank’s AAs. Examiners also found that given the product lines offered by the bank, its lending to borrowers reflected reasonable penetration among retail customers of different income levels and business customers of different sizes. In addition, examiners found that the bank demonstrated adequate responsiveness to community development needs through community development loans, qualified investments, contributions, and community development services.

<sup>32</sup> 12 U.S.C. § 2801 *et seq.*

<sup>33</sup> See 12 CFR 228.26(b).

<sup>34</sup> See 12 CFR 228.26(c).

<sup>35</sup> See 12 CFR 228.26(a).

<sup>36</sup> The SmartBank Evaluation was conducted using the Interagency Intermediate Small Institution CRA Examination Procedures. Reserve Bank examiners reviewed small business and home mortgage lending from January 1, 2016, through December 31, 2017, and reviewed community development lending, investment, and service activities from January 1, 2016, through December 31, 2017. The SmartBank Evaluation covered SmartBank’s seven AAs located in the states of Tennessee and Florida. A full-scope review was conducted in both the Chattanooga, Tennessee AA, and the Panama City, Florida AA.

### *CRA Performance of Sevier County Bank*

Sevier County Bank was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of February 10, 2020 (“Sevier County Bank Evaluation”).<sup>37</sup> Sevier County Bank received a “Satisfactory” rating for the Lending Test.

Examiners found that Sevier County Bank’s loan-to-deposit ratio was reasonable given the bank’s size and financial condition as well as the credit needs of the bank’s AA. Examiners noted that the bank made a majority of its home mortgage and small business loans, by number and dollar volume, in its AA. Examiners found that the distribution of borrowers reflected a reasonable penetration of loans among businesses of different sizes and retail customers of different income levels and that the geographic distribution of loans reflected reasonable dispersion throughout the AA.

### *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. SmartFinancial represents that, following consummation of the proposal, it does not expect any significant changes to the products and services currently offered to customers of either SmartBank or Sevier County Bank. SmartFinancial also represents that the transaction would enable the combined bank to benefit from certain operating efficiencies, enabling the bank to better serve its communities following the proposed merger. In addition, SmartFinancial notes that customers of both banks would benefit from an expanded branch network.

### *Conclusion on Convenience and Needs Considerations*

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions’ records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by SmartFinancial, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board determines that convenience and needs considerations, as well as the parties’ performance records under the CRA, are consistent with approval.

### **Financial Stability Considerations**

Section 3 of the BHC Act requires the Board to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.”<sup>38</sup> In addition, the Bank Merger Act requires the Board to consider “risk to the stability of the United States banking or financial system.”<sup>39</sup>

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by

<sup>37</sup> The Sevier County Bank Evaluation was conducted using the Interagency Small Institution CRA Examination Procedures. Examiners reviewed lending data from February 21, 2017, through February 10, 2020. The Sevier County Bank Evaluation reviewed the bank’s activities in its sole AA, consisting of Sevier County, Tennessee.

<sup>38</sup> 12 U.S.C. § 1842(c)(7).

<sup>39</sup> 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.<sup>40</sup> These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opacity and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage on the broader economy.<sup>41</sup>

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in total assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.<sup>42</sup>

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that has less than \$10 billion in total assets and a pro forma organization of less than \$100 billion in total assets. Both the acquirer and the target are predominantly engaged in retail and commercial banking activities.<sup>43</sup> The pro forma organization would not have cross-border activities or exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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

### **Establishment of Branches**

SmartBank has applied under section 9 of the FRA to establish branches at the current locations of Sevier County Bank.<sup>44</sup> The Board has assessed the factors it is required to

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<sup>40</sup> Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

<sup>41</sup> For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

<sup>42</sup> See *People's United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

<sup>43</sup> SmartFinancial and Sevier both offer a range of retail and commercial banking products and services. SmartFinancial has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

<sup>44</sup> See 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. Thus, a state member bank resulting from an interstate merger transaction may maintain and operate a branch in a state other than the home state of the bank in accordance with section 44 of the FDI Act. See 12 U.S.C. § 36(d). In addition, a state member bank may retain any branch following a merger that might be established as a new branch of the resulting bank under state law, as well as any branch that was in operation on

consider when reviewing an application under that section, including SmartBank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises.<sup>45</sup> For the reasons discussed in this order, the Board determines that those factors are consistent with approval.

### **Conclusion**

Based on the foregoing and all the facts of record, the Board determines 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 BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by SmartFinancial and SmartBank with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on any commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective August 17, 2021.

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

Ann E. Misback  
*Secretary of the Board*

### **Appendix**

#### *Tennessee Branches to Be Established*

1. 111 East Main Street, Sevierville, Tennessee
2. 3605 South Parkway, Pigeon Forge, Tennessee
3. 11403 Chapman Highway, Seymour, Tennessee
4. 3260 Parkway, Pigeon Forge, Tennessee
5. 720 Dolly Parton Parkway, Sevierville, Tennessee
6. 961 East Parkway, Gatlinburg, Tennessee
7. 242 Wears Valley Road, Pigeon Forge, Tennessee

#### *Virginia Branch to Be Established*

8. 4421 Cox Road, Glen Allen, Virginia

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February 25, 1927, as a branch of any bank. See 12 U.S.C. §§ 36(b)(2) and (c). Upon consummation, SmartBank's branches would be permissible under applicable state law. See Tenn. Code Ann. § 45 2-614; Va. Code Ann. § 6.2-859 (2010).

<sup>45</sup> 12 CFR 208.6. Upon consummation of the proposed transaction, SmartBank's investments in bank premises would remain within the legal requirements of section 208.21(a) of the Board's Regulation H, 12 CFR 208.21(a).