



## Legal Developments: Third Quarter, 2013

### Orders Issued Under Bank Holding Company Act

#### Order Issued Under Section 3 of the Bank Holding Company Act

Hana Financial Group Inc.  
Seoul, Republic of Korea

*Order Approving Acquisition of Shares of a Bank Holding Company*  
*FRB Order No. 2013-4 (August 14, 2013)*

Hana Financial Group Inc., Seoul, Republic of Korea (“HFG”), a foreign banking organization subject to the provisions of the Bank Holding Company Act, as amended (“BHC Act”),<sup>1</sup> has requested the Board’s approval under section 3 of the BHC Act to acquire up to 71.4 percent of the voting shares of BNB Financial Services Corporation (“BNB”), New York, New York, and indirectly acquire BNB Bank, National Association, Fort Lee, New Jersey, pursuant to section 3(a)(1) of the BHC Act.<sup>2</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (77 *Federal Register* 48984, August 15, 2012). The time for filing 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.

HFG, with total assets of approximately \$260.4 billion, is the third largest banking organization in Korea.<sup>3</sup> HFG, through its subsidiaries, Hana Bank and Korea Exchange Bank (“KEB”), both of Seoul, engages in a broad range of banking and financial services throughout the world, including retail and commercial banking, corporate and investment banking, asset management, insurance-related activities, leasing, foreign exchange, and trade finance.

Internationally, HFG operates through its branches and subsidiaries in five continents, including Asia, Australia, Europe, and North and South America. In the United States, Hana Bank operates an uninsured New York state-licensed agency. HFG also maintains nonbanking subsidiaries in the United States.<sup>4</sup>

<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> 12 CFR 225.11(c)(1).

<sup>3</sup> Unless otherwise provided, asset and ranking data are as of March 31, 2013, and are based on the exchange rate as of that date, as appropriate.

<sup>4</sup> KEB does not engage in commercial banking activities in the U.S., but owns several U.S. nonbank subsidiaries. The nonbanking subsidiaries are KEB NY Financial Corp. and KEB USA International Corp., both of New York, New York; and KEB LA Financial Corp., Los Angeles, California. KEB NY and KEB LA provide lending and trade financing services, while KEB USA engages in activities limited to providing administrative back-office functions to KEB.

HFG is a qualifying foreign banking organization and, upon consummation of the proposal, would continue to meet the requirements for a qualifying foreign banking organization under Regulation K.<sup>5</sup>

BNB, with total consolidated assets of \$320.1 million, owns BNB Bank and a non-bank subsidiary, BNB Statutory Trust I (“BNB Trust”), also of New York, New York.<sup>6</sup> BNB Bank provides general commercial banking services to individuals and small- and medium-sized businesses through its three branches, two in New Jersey and one in New York. The bank also has two loan production offices in New Jersey.

### **Factors under the Bank Holding Company Act**

The BHC Act sets forth the factors that the Board must consider when reviewing the formation of bank holding companies or the acquisition of banks. These factors are the competitive effects of the proposal in the relevant geographic markets; the convenience and needs of the communities to be served, including the records of performance of the insured depository institutions involved in the transaction under the Community Reinvestment Act (“CRA”);<sup>7</sup> the effects of the acquisition on financial stability; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; the availability of information to determine and enforce compliance with the BHC Act and other applicable federal banking laws; and, in the case of applications involving a foreign bank such as Hana Bank, whether the foreign bank is subject to comprehensive supervision and regulation on a consolidated basis by its home country supervisor.<sup>8</sup>

### **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 any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>9</sup>

HFG does not currently compete with BNB in any relevant banking or nonbanking market.<sup>10</sup> Based on all the facts of record, the Board has concluded that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval of the proposal.

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

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources (including the competence, experience, and integrity of officers, directors, and principal shareholders) and future prospects of the companies and depository institutions

<sup>5</sup> 12 CFR 211.23(a).

<sup>6</sup> BNB Trust was established in 2004 to issue trust preferred securities for BNB.

<sup>7</sup> 12 U.S.C. § 2901 *et seq.*

<sup>8</sup> 12 U.S.C. § 1842(c).

<sup>9</sup> 12 U.S.C. § 1842(c)(1). *See e.g., Emigrant Bancorp, Inc., 82 Federal Reserve Bulletin 555 (1996).*

<sup>10</sup> Hana Bank’s New York agency is not insured by the Federal Deposit Insurance Corporation and cannot accept retail deposits. BNB’s only nonbank subsidiary is a trust company that provides services solely to BNB Bank, while Hana’s nonbank subsidiaries engage in lending, trade finance and money transmittal services.

involved in the proposal as well as the effectiveness of these companies in combatting money laundering activities.<sup>11</sup> The Board's review was conducted in light of all the facts of record, including confidential supervisory and examination information from the various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, and information provided by HFG and by public commenters. The Board also has consulted with the Korean Financial Supervision Service ("FSS"), the agency with primary responsibility for the supervision and regulation of Korean banking organizations, including HFG.

In evaluating financial factors, the Board reviews the financial condition of the applicant and the target depository institution. The Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board also evaluates the effect of the transaction on the financial condition of the applicant, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The capital levels of HFG exceed the minimum levels that would be required under the Basel Capital Accord and are considered to be equivalent to the capital levels that would be required of a U.S. banking organization.<sup>12</sup> HFG's reported earnings performance and asset quality indicators, including nonperforming loans and reserves for loan losses, are consistent with approval of the proposal. The proposed transaction is structured as a cash purchase of shares. HFG would use existing resources to fund the purchase of the shares. In light of the size of HFG relative to the size of its investment in BNB, the transaction would have a minimal impact on the financial condition of HFG. Based on its review of the record, the Board finds that HFG has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of HFG's U.S. operations and of BNB, including assessments of their management, risk-management systems, and operations. The Board also has considered its supervisory experience and that of the other relevant bank supervisory agencies with the organizations, including consultations in connection with this proposal, and the organizations' records of compliance with applicable banking and anti-money-laundering laws. As noted, the Board has also consulted with the FSS. In addition, the Board has considered the future prospects of HFG in light of the financial and managerial resources of the organizations.

Section 3 of the BHC Act also requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.<sup>13</sup> The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which HFG operates and has communicated with relevant government authorities concerning access to information. In addition, HFG has committed that, to the extent not prohibited by applicable law, it will make available to the Board such information on its operations and the operations of its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act, and other applicable federal laws. HFG also has

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<sup>11</sup> 12 U.S.C. § 1842(c)(2), (5), and (6). The Board has analyzed the effectiveness of HFG's anti-money-laundering efforts in connection with the Board's assessment of whether HFG is subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in its home country.

<sup>12</sup> The Board considered the total and tier 1 risk-based capital ratios and the ratio of tier 1 capital to total consolidated assets of HFG, Hana Bank, and KEB.

<sup>13</sup> 12 U.S.C. § 1842(c)(3)(A).

committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable it or its affiliates to make such information available to the Board. Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as access to information by the Board are consistent with approval.

### **Supervision or Regulation on a Consolidated Basis**

In evaluating this application and as required by section 3 of the BHC Act, the Board considered whether HFG is subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in its home country.<sup>14</sup>

As noted, the FSS is the supervisor of Korean banking organizations, including holding companies such as HFG. The FSS conducts inspections of HFG and its subsidiaries annually or on an as needed basis, and requires HFG to submit reports about its operations on a consolidated basis. The FSS also reviews transactions between HFG and its subsidiaries and has authority to require HFG to take measures necessary to ensure the safety and soundness of the HFG organization. The Board has previously determined that the FSS exercises comprehensive consolidated supervision over Korean financial holding companies and banks.<sup>15</sup> HFG represents, on its own behalf and with respect to Hana Bank and KEB, that they are subject to the same supervisory regime as applies to other Korean financial holding companies and banks. The Board also has consulted with the FSS about their supervision of Hana Bank, KEB, and HFG. Based on all the facts of record, the Board has concluded that HFG, Hana Bank and KEB are subject to comprehensive supervision on a consolidated basis by their appropriate home country authorities for purposes of this application.

In evaluating the effectiveness of HFG and its subsidiaries' policies and procedures to combat money laundering activities in connection with these determinations, the Board considered HFG's and its subsidiaries' anti-money-laundering policies and procedures as well as the Board's supervisory experiences and those of other relevant banking supervisory organizations with HFG's compliance record. On the basis of all facts of record, the Board has determined that HFG and its subsidiaries' anti-money-laundering measures are consistent with approval.

### **Convenience and Needs Considerations**

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and

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<sup>14</sup> 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign bank is subject to comprehensive supervision on a consolidated basis by the appropriate authorities in the bank's home country under the standards set forth in Regulation K. See 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home-country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard under section 211.24 of Regulation K, the Board must assess, among other factors, the extent to which the home country supervisor: (a) ensures that the bank has adequate procedures for monitoring and controlling its activities worldwide; (b) obtains information on the condition of the bank and its subsidiaries and offices outside the home country through regular reports of examination, audit reports, or otherwise; (c) obtains information on the dealings and relationships between the bank and its affiliates, both foreign and domestic; (d) receives 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 (e) evaluates 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.

<sup>15</sup> See *Woori Finance Holdings Co., Ltd.*, 89 *Federal Reserve Bulletin* 436 (2003).

take into account the records of the relevant insured depository institutions under the CRA.<sup>16</sup> The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, in evaluating bank expansionary proposals.<sup>17</sup>

The Board has considered the convenience and needs factor and the CRA performance record of BNB in light of all the facts of record. HFG represented that it intends to leverage its resources and banking expertise to strengthen BNB Bank, and to update and expand the products and services that BNB Bank offers to its customers.

As part of its consideration of convenience and needs, the Board has examined the CRA performance record of BNB Bank. BNB Bank received a CRA rating of "satisfactory" from the Office of the Comptroller of the Currency at its most recent CRA performance evaluation dated March 12, 2012. HFG does not own any entities that are subject to CRA. Based on a review of the entire record, the Board has concluded that considerations relating to convenience and needs considerations and the CRA performance records of the relevant insured depository institutions are consistent with approval.

### **Financial Stability**

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board also 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>18</sup>

In this case, the proposed acquisition of BNB is not a significant expansion by HFG and would have a de minimis impact on HFG's systemic footprint. In addition, there is no evidence of any significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Based on these and all the other facts of record, the Board has determined that the proposal would not materially increase risk to the stability of the U.S. financial or banking system.

### **Conclusion**

Based on the foregoing and all the facts of record, the Board approves the proposal by HFG to acquire up to 71.4 percent of the voting shares of BNB. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by HFG with all the representations and commitments made in connection with the applications, commitments referred to in this order, and the receipt of all other regulatory approvals. These representations, commitments, and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The transaction may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order,

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<sup>16</sup> 12 U.S.C. § 2901 *et seq.*; 12 U.S.C. § 1842(c)(2).

<sup>17</sup> 12 U.S.C. § 2903.

<sup>18</sup> Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

unless such period is extended for good cause by the Board or the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective August 14, 2013.

Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Duke, Tarullo, Raskin, Stein, and Powell.

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

## Order Issued Under Section 4 of the Bank Holding Company Act

Live Oak Bancshares, Inc.  
Wilmington, North Carolina

*Order Approving Notice to Engage in Nonbanking Activities*  
*FRB Order No. 2013-5 (August 14, 2013)*

Live Oak Bancshares, Inc. (“Live Oak”), Wilmington, North Carolina, has requested the Board’s approval under sections 4(c)(8) and 4(j) of the Bank Holding Company Act (“BHC Act”)<sup>1</sup> and section 225.24 of the Board’s Regulation Y<sup>2</sup> to acquire Government Loan Solutions, Inc. (“GLS”), Cleveland, Ohio.<sup>3</sup> GLS provides support services in connection with the settlement, accounting, and securitization processes for government-guaranteed loans, including loans originated under section 7(a) of the Small Business Administration Act (“SBA”) and U.S. Department of Agriculture (“USDA”) loan programs.

Notice of the proposal, affording interested persons an opportunity to comment, has been published in the *Federal Register* (77 *Federal Register* 73467 (2012)). The time for filing comments has expired, and the Board has considered the notice and all comments received in light of the factors set forth in section 4 of the BHC Act.

Live Oak, with consolidated assets of approximately \$342.9 million, controls deposits of approximately \$288.8 million, which represents less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>4</sup> Live Oak controls one insured depository institution, Live Oak Banking Company (“Bank”), Wilmington, that operates one office in North Carolina.

As a result of the proposed acquisition, Live Oak would engage in the following nonbanking activities:

1. making, acquiring, brokering, or servicing loans or other extensions of credit for the account of GLS or the account of others, in accordance with 12 CFR 225.28(b)(1);
2. activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit, as determined by the Board, including performing appraisals

<sup>1</sup> 12 U.S.C. §§ 1843(c)(8) and 1843(j).

<sup>2</sup> 12 CFR 225.24.

<sup>3</sup> Live Oak indirectly would acquire a controlling interest in SB Indexes, LLC (“SB Indexes”) and Secondary Market Access, LLC (“SMA”), both of Cleveland, Ohio. GLS owns 33 percent of SB Indexes. GLS and two management officials of GLS own a combined total of 51 percent of SMA. SB Indexes and SMA are not currently conducting any operations.

<sup>4</sup> Asset and nationwide deposit data are as of December 31, 2012.

of real estate and tangible and intangible personal property, including securities, in accordance with 12 CFR 225.28(b)(2);

3. acting as investment or financial advisor to any person, including furnishing general economic information and advice, general economic statistical forecasting services, and industry studies, in accordance with 12 CFR 225.28(b)(6);
4. providing management consulting advice on any matter to unaffiliated depository institutions, including commercial banks, in accordance with 12 CFR 225.28(b)(9); and
5. providing data processing, data storage and data transmission services, facilities, databases, advice, and access to such services, facilities, or databases by any technological means, in accordance with 12 CFR 225.28(b)(14).

The Board has determined by regulation that these proposed activities are activities closely related to banking for purposes of section 4(c)(8) of the BHC Act. Live Oak has committed to conduct the proposed activities in accordance with the limitations set forth in Regulation Y and the Board's orders.

In reviewing the proposal, the Board is required by section 4(j)(2)(A) of the BHC Act to determine that the proposed acquisition "can reasonably be expected to produce benefits to the public...that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."<sup>5</sup> As part of its evaluation of these factors, the Board considers the financial and managerial resources of the companies involved and the effect of the proposal on competition in the relevant markets.<sup>6</sup>

In assessing the financial and managerial resources of the companies involved, the Board has considered, among other things, information provided by Live Oak, public comments on the proposal, confidential reports of examination, other confidential supervisory information, and publicly reported financial and other information.

In evaluating the financial factors of this proposal, the Board has considered a number of factors, including capital adequacy and earnings performance. Live Oak and Bank are well-capitalized and would remain so after consummation of the proposed transaction. The transaction would be structured as a share exchange, with the outstanding shares of GLS's common stock being exchanged for shares of Live Oak. Asset quality and earnings prospects are 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 Live Oak and Bank, including assessments of their management expertise, internal controls, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant financial supervisory agencies with the organization and its records of compliance with applicable banking laws and with anti-money-laundering laws.

The Board also considered public comments that expressed general concern about Live Oak's capacity to supervise the proposed activities. Live Oak has represented to the Board

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<sup>5</sup> 12 U.S.C. § 1843(j)(2)(A).

<sup>6</sup> 12 CFR 225.26.

that the necessary controls and reporting requirements would be implemented in order to manage effectively GLS as a nonbank subsidiary of Live Oak. These controls and reporting requirements include policies and procedures for the management of financial risk and treasury operations, formal operating and strategic planning processes, and review by Live Oak's internal and external auditors, which report directly to the audit committee of Live Oak's board of directors. Live Oak and Bank are considered to be well managed, and the policies and procedures to be implemented at GLS are considered satisfactory.

Based on all the facts of record, including a review of the comments received, the Board has concluded that considerations relating to the financial and managerial resources of the organizations involved in the proposal are consistent with approval under section 4 of the BHC Act.

In addition, the Board has considered the competitive effects of the proposal in light of all the facts of record. Live Oak and GLS do not provide the same nonbanking services and, therefore, do not compete in the same market for any nonbanking services. As a result, the proposed acquisition would not have any effect on competition. Based on all the facts of record, the Board concludes that the proposed acquisition would have no significantly adverse competitive effects in any relevant market.

Section 4(j)(2)(A) of the BHC Act also requires the Board to consider whether the proposal is likely to pose a significant risk to the stability of the United States banking or financial system. Given the size of the entities involved in this transaction, the types of activities proposed, and the availability of substitute providers of the proposed financial services, this transaction would not result in a significant increase in the risk to or interconnectedness of the financial system. Based on these and all the other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

The Board expects that the proposed acquisition would result in benefits to the public that outweigh any possible adverse effects from the transaction. GLS provides automation and valuation services for financial participants in SBA and USDA loan programs. The acquisition of GLS by Live Oak will enhance the ability of GLS to provide its services to lenders who make SBA and USDA loans, thereby potentially expanding the availability of those services. The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent is not likely to result in adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or a significant risk to the stability of the United States banking or financial system that would outweigh the public benefits of the proposal discussed above.<sup>7</sup>

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<sup>7</sup> Three commenters opposed the proposal on Community Reinvestment Act ("CRA") (12 U.S.C. § 2901 *et seq.*) grounds. A depository institution's CRA performance record is not a statutory factor in evaluating a notice to acquire a nondepository institution under section 4 of the BHC Act. Nevertheless, the Board considered the substance of the comments in evaluating the balance of public benefits likely to result from the transaction. The Board consulted with the Federal Deposit Insurance Corporation ("FDIC"), Bank's primary federal regulator, and reviewed Bank's most recent CRA performance evaluation ("2010 Evaluation"). The FDIC has determined that the CRA performance of Bank is "Satisfactory," "given the strong performance in the loans and investments and grants criteria." 2010 Evaluation, p.2. Moreover, the 2010 Evaluation did not identify any violations of antidiscrimination laws or regulations or uncover evidence of discriminatory or other illegal credit practices. Bank has indicated it has complied in all respects with its approved CRA Strategic Plan since the 2010 Evaluation. The commenters also asserted that Bank should not have received credit under the lending test for a particular loan in Bank's 2010 Evaluation. The FDIC evaluated the loan and determined that it met the CRA-qualifying criteria for community development loans. The commenters also questioned whether Live Oak would expand its CRA commitments "to serve in its expanded markets" in view of this proposal. Acquisition by a bank holding company of a nondepository institution under section 4 of the BHC Act does not result in an expansion of an institution's CRA assessment area. *See* 12 CFR 228.41.

Accordingly, based on all the facts of record, the Board has determined that the balance of the public benefits that it must consider under section 4(j)(2) of the BHC Act is consistent with approval of the proposal.

Based on the foregoing the Board has determined that the notice 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 Board's approval is specifically conditioned on compliance by Live Oak with the conditions imposed in this order and the commitments made to the Board in connection with the notice. The Board's approval also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),<sup>8</sup> and to the Board's authority to require such modification or termination of the activities of Live Oak and any of its subsidiaries as the Board finds necessary to ensure compliance with, or to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, these 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.

This transaction shall not be consummated later than three months after the effective date of this order unless such period is extended for good cause by the Board or the Federal Reserve Bank of Richmond, acting pursuant to delegated authority.

By order of the Board of Governors, effective August 14, 2013.

Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Duke, Tarullo, Raskin, Stein, and Powell.

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

### **Order Issued Under Sections 3 and 4 of the Bank Holding Company Act**

One PacificCoast Foundation  
Oakland, California

One PacificCoast Bancorp, Inc.  
Oakland, California

*Order Approving the Formation of Bank Holding Companies and Notice to Engage in Nonbanking Activities*  
*FRB Order No. 2013-7 (September 25, 2013)*

One PacificCoast Foundation (the "Foundation"), a savings and loan holding company within the meaning of the Home Owners' Loan Act, and its subsidiary, One PacificCoast Bancorp, Inc. ("OnePac Bancorp"), both of Oakland, California (collectively, "Applicants"), have requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")<sup>1</sup> to become bank holding companies by acquiring 90.1 percent of

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<sup>8</sup> 12 CFR 225.7 and 225.25(c).

<sup>1</sup> 12 U.S.C. § 1842.

the common stock<sup>2</sup> of Albina Community Bank (“Albina Bank”), Portland, Oregon.<sup>3</sup> Applicants have also requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board’s Regulation Y to retain control of One PacificCoast Bank, FSB (“One PacificCoast Bank”), also of Oakland,<sup>4</sup> a federal savings association currently controlled by Applicants, and thereby engage in operating a savings association under section 225.28(b)(ii). The Foundation has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act to engage in community development activities and activities related to extending credit.<sup>5</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (78 *Federal Register* 11884, 15015, 24201 (2013)). The time for filing comments has expired, and the Board has considered the applications and all comments received in light of the factors set forth in the BHC Act.

The Foundation, OnePac Bancorp, and One PacificCoast Bank were created and funded by Thomas Steyer and Kathryn Taylor.<sup>6</sup> The Foundation commenced operations in 2007, and in that same year, Mr. Steyer and Ms. Taylor donated all of the nonvoting stock of OnePac Bancorp to the Foundation.<sup>7</sup> Mr. Steyer and Ms. Taylor control all of the voting rights of OnePac Bancorp.

The Foundation, a non-stock, Delaware corporation and a nonprofit, taxexempt corporation under section 501(c)(3) of the Internal Revenue Code, was established for the purpose of combating economic distress and encouraging community development in communities that One PacificCoast Bank serves by promoting financial literacy, affordable housing, and the provision of loans and investments, including consumer loans and micro and small business loans. The Foundation also supports efforts to bring depository services to disadvantaged communities. One PacificCoast Bank is a direct subsidiary of OnePac Bancorp, which is a shell savings and loan holding company subsidiary of the Foundation.

OnePac Bancorp has total consolidated assets of approximately \$290.5 million and controls approximately \$227.5 million in deposits.<sup>8</sup> OnePac Bancorp operates in California,

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<sup>2</sup> OnePac Bancorp would directly acquire newly issued shares of Albina Bank, representing 90.1 percent of the latter’s common stock. Under the proposal, Albina Bank’s current parent, Albina Community Bancorp (“Albina Bancorp”), Portland, would retain 9.9 percent of the common stock of Albina Bank.

<sup>3</sup> Albina Bank has been operating under a consent order issued by the Federal Deposit Insurance Corporation (“FDIC”) and the Oregon Division of Finance and Corporate Securities since March 2, 2010. On consummation, Applicants would operate AlbinaBank separately from One PacificCoast Bank.

<sup>4</sup> 12 U.S.C. §§ 1843(c)(8) and 1843(j); 12 CFR 225.24. The Board previously has determined by regulation that the operation of a savings association is closely related to banking for the purposes of section 4(c)(8) of the BHC Act. 12 CFR 225.28(b)(4)(ii).

<sup>5</sup> 12 U.S.C. §§ 1843(c)(8) and 1843(j); 12 CFR 225.28(b)(2) and 225.28(b)(12). OnePacificCoast Bank is designated as a Community Development Financial Institution (CDFI). A CDFI is a financial institution that provides credit and financial services to underserved markets and populations and is certified by the Community Development Financial Institutions Fund at the U.S. Department of Treasury. One PacificCoast Bank’s mission is to bring banking to low-income communities in an economically and environmentally sustainable manner.

<sup>6</sup> Mr. Steyer and Ms. Taylor founded OneCalifornia Bank and OneCalifornia Foundation in Oakland in 2007. OnePac Bancorp was formerly named OneCalifornia Bancorp, Inc. One PacificCoast Bank, which OnePac Bancorp acquired in 2010, was formed by merging OneCalifornia Bank and ShoreBank Pacific, Ilwaco, Washington.

<sup>7</sup> The nonvoting common stock carries with it all of the dividend and distribution rights and all of the economic interest in Bancorp. Profits of One PacificCoast Bank can only be distributed to the Foundation, which is mandated to reinvest those proceeds into the communities it serves and into businesses and programs designed to protect the environment.

<sup>8</sup> Unless otherwise noted, national data on deposits and assets are as of June 30, 2013, while state data are as of June 30, 2012. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

Oregon, and Washington.<sup>9</sup> In Oregon, the only state of common operation with Albina Bank, OnePac Bancorp is the 54<sup>th</sup> largest depository institution, controlling deposits of approximately \$23.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in the state.<sup>10</sup>

Albina Bancorp, which operates solely in Portland, has total consolidated assets of \$123.2 million and is the 36<sup>th</sup> largest insured depository institution in Oregon, controlling deposits of approximately \$114.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in the state.

On consummation of this proposal, OnePac Bancorp would control deposits of approximately \$341.6 million, which would represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Oregon, OnePac Bancorp would become the 32<sup>nd</sup> largest insured depository institution, controlling deposits of approximately \$147.1 million, which would represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.

Because this transaction involves both the formation of a bank holding company through the acquisition by Applicants of a bank and the retention of a thrift by that bank holding company, the Board has reviewed the transaction under both section 3 and section 4 of the BHC Act. Section 3 governs the formation of a bank holding company and the acquisition of a bank; section 4 establishes the standards governing the acquisition and retention of a thrift.

#### **Interstate and Deposit cap Analysis**

Sections 3(d) and 4(i)(8) of the BHC Act impose certain requirements on interstate transactions. Section 3(d) generally provides that the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank 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>11</sup> However, this section further provides that the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state that has not been in existence for the lesser of the state statutory minimum period of time or five years.<sup>12</sup> In addition, sections 3(d) and 4(i)(8) provide that the Board may not approve an application by a bank holding company to acquire an insured depository institution if the home state of such insured depository institution is a state other than the home state of the bank holding company and the applicant controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States.<sup>13</sup>

OnePac Bancorp would become a bank holding company upon the acquisition of control of Albina Bank. For purposes of the BHC Act, the home state of OnePac Bancorp would

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<sup>9</sup> One PacificCoast Bank operates branches in Oakland; Portland; and Seattle and Ilwaco, Washington. One PacificCoast Bank also operates a loan production office in Sacramento, California.

<sup>10</sup> In California and Washington, states in which Albina Bank does not operate, OnePacBancorp is also not among the largest 50 insured depository institutions.

<sup>11</sup> The standard was changed from adequately capitalized and adequately managed to wellcapitalized and well managed by section 607(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No.111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(d)(1)(A).

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

<sup>13</sup> 12 U.S.C. §§ 1842(d)(2)(A) and 1843(i)(8).

be Oregon on consummation of the proposal,<sup>14</sup> and One PacificCoast Bank is located in California. On consummation, OnePac Bancorp would own one insured depository institution in each of Oregon and California. Assuming this were an interstate transaction for purposes of the BHC Act, the Board would not be required to deny the proposal under section 3(d) or 4(i)(8) of the BHC Act.

OnePac Bancorp is well capitalized and well managed under applicable law. The minimum age requirement under Oregon law is three years,<sup>15</sup> and Albina Bank has been in existence for more than three years.

Based on the latest available data reported by all insured depository institutions, the total amount of consolidated deposits of insured depository institutions in the United States is \$9.9 trillion. On consummation of the proposed transaction, OnePac Bancorp would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Accordingly, in light of all the facts of record, the Board is not required to deny the proposal under sections 3(d) or 4(i)(8) 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 any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>16</sup> In addition, under section 4 of the BHC Act, the Board must consider the competitive effects of a proposal to retain a savings association under the public benefits factor of section 4(j) of the BHC Act.<sup>17</sup>

OnePac Bancorp and Albina Bank compete directly in the Portland banking market.<sup>18</sup> The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market, the relative shares of total deposits in insured depository institutions in the market (“market deposits”) that are controlled by OnePac Bancorp and Albina Bank,<sup>19</sup> the concentration levels of market deposits and the increase in those levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under

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<sup>14</sup> 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. 12 U.S.C. §1842(d). The home state of a federal savings association is the state where the home office is located. 12 U.S.C. § 1841(o)(4).

<sup>15</sup> See Oregon Revised Statutes § 715.017.

<sup>16</sup> 12 U.S.C. § 1842(c)(1).

<sup>17</sup> 12 U.S.C. § 1843(j)(2)(A).

<sup>18</sup> The Portland (OR-WA) banking market includes portions of Clark County, Washington, as well as six counties in Oregon (Clackamas, Columbia, Marion, Multnomah, Washington, and Yamhill).

<sup>19</sup> Deposit and market share data are as of June 30, 2012, 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 of 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). In this case, OnePacBancorp’s deposits are weighted at 50 percent pre-merger and 100 percent postmerger to reflect the resulting ownership by a commercial banking organization.

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

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Portland banking market. The proposal would result in a slight decrease in market concentration, as measured by the HHI, and numerous competitors would remain.<sup>21</sup>

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

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking market in which OnePac Bancorp and Albina Bank compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

### **Other Section 3(c) Considerations**

Section 3(c) of the BHC Act requires the Board to take into consideration a number of other factors in acting on bank acquisition applications. These factors include the financial and managerial resources (including consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders) and future prospects of the company and banks concerned; the effectiveness of the company in combatting money laundering; the convenience and needs of the community to be served; and the extent to which the proposal would result in greater or more concentrated risks to the stability of the United States banking or financial system.

The Board has considered all of these factors and, as described below, has determined that all considerations are consistent with approval of the application. The review was conducted in light of all the facts of record, including supervisory and examination information from various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, information provided by Applicants, and public comments received on the proposal.

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<sup>20</sup> Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (*see* Press Release, Department of Justice (August 19, 2010), [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html)), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified.

<sup>21</sup> OnePac Bancorp operates the 34<sup>th</sup> largest depository institution in the Portland banking market, controlling deposits of approximately \$23.2 million, which represent less than 1 percent of market deposits. Albina Bank operates the 22<sup>nd</sup> largest depository institution in the market, controlling deposits of approximately \$123.9 million, which represent less than 1 percent of market deposits. On consummation, OnePac Bancorp would control weighted deposits of approximately \$135.5 million and unweighted deposits of approximately \$147.1 million, both of which represent less than 1 percent of market deposits. The HHI of 2065 would decrease by 1 point to 2064.

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

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and a consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and 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 the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. This transaction would be structured as a share purchase by OnePac Bancorp of newly issued shares of Albina Bank, representing 90.1 percent of the common shares of Albina Bank. As noted previously, under the proposal, Albina Bank's current parent, Albina Bancorp, would retain common shares of Albina Bank that would represent 9.9 percent of Albina Bank's common stock.<sup>22</sup>

The Board has considered the financial factors of the proposal, including public comments received on the proposal. The commenters expressed concern that OnePac Bancorp does not possess the financial or managerial resources necessary to restore Albina Bank to sound condition in light of the fact that OnePac Bancorp (i) does not appear to have a plan to restore Albina Bank to profitability and (ii) has not generated a profit since acquiring ShoreBank Pacific in late 2010. The commenters argue that Mr. Steyer and Ms. Taylor, rather than the Foundation and OnePac Bancorp, appear to be the source of strength for One PacificCoast Bank and would be the source of strength for Albina Bank. In addition, the commenters questioned the ability of Applicants to effectively oversee and manage One PacificCoast Bank and Albina Bank as two separate banks and asserted that the two institutions could be operated at lower cost if combined.

OnePac Bancorp and One PacificCoast Bank are well capitalized and would remain so on consummation of the proposed acquisition. The Foundation, which controls most of the total equity of OnePac Bancorp, would provide the capital necessary to complete the proposed transaction through a cash grant made to it by Mr. Steyer and Ms. Taylor. The Foundation is controlled by a board of eight directors, which includes Mr. Steyer and Ms. Taylor. The board of directors has determined to focus the Foundation's support on OnePac Bancorp and the bank(s) that it owns, and substantially all of the Foundation's activities and expenditures are in direct support of One PacificCoast Bank.<sup>23</sup>

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<sup>22</sup> The commenters, two of which are indirect investors in the trust preferred securities ("TruPS") issued by affiliates of Albina Bancorp, and one of which provided credit protection to indirect holders of the TruPS, objected to the structure of the proposal for several reasons, including that (i) the structure of the transaction violates Albina Bancorp's legal obligations to its creditors pursuant to indentures under which the TruPS were issued, exposing Albina Bancorp, its management, Albina Bank, and possibly OnePac Bancorp, to litigation; and (ii) the proposed transaction may raise other legal bases of liability, including deepening insolvency and breach of fiduciary duty by directors of Albina Bancorp and Albina Bank and tortious interference with contractual relations by OnePac Bancorp, further exposing OnePac Bancorp, Albina Bank, and potentially Albina Bancorp, to litigation. The commenters also speculated that approval of the proposed transaction could impair the ability of bank holding companies to raise capital in the future. Applicants disagree with the conclusion presented by the commenters. Courts have concluded that the Board's limited jurisdiction to review applications under the BHC Act does not authorize it to consider matters unrelated to specific statutory factors, and in particular, matters related to minority shareholder valuations. See *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10<sup>th</sup> Cir. 1973). These matters are governed by state corporate and contract law and may be adjudicated by a court with jurisdiction to provide the commenters with relief, if appropriate. *Id.* at 753.

<sup>23</sup> Applicants have represented that the Foundation can contribute capital directly to Albina Bank, or indirectly through OnePac Bancorp, consistent with its status as an IRS tax-exempt entity.

As a nonstock corporation, Foundation cannot directly raise funds through stock issuance. However, OnePac Bancorp, an intermediate stock holding company, would be the direct owner of Albina Bank and One PacificCoast Bank and would have the ability to access funding markets, including by issuing new shares of common stock for the purpose of funding the capital needs of Albina Bank and One PacificCoast Bank. Furthermore, Applicants have represented that whenever capital has been needed to support One PacificCoast Bank, the Foundation has been able to raise capital through donations made directly by Mr. Steyer and Ms. Taylor or indirectly through organizations funded by Mr. Steyer and Ms. Taylor. For example, Mr. Steyer and Ms. Taylor have contributed approximately \$50 million to the Foundation, \$46 million of which has been injected into One PacificCoast Bank. In addition, the Foundation has unencumbered cash on hand that is available to support the capital needs of the bank. In light of OnePac Bancorp's ability to raise capital and the record of the financial support provided by Mr. Steyer and Ms. Taylor to Applicants and One PacificCoast Bank, Applicants appear to have adequate resources to absorb the costs of the proposal and to manage the operations of both One PacificCoast Bank and Albina Bank. In addition, asset quality and earnings prospects are consistent with approval. On a pro forma basis, the acquisition of Albina Bank is not expected to have a negative impact on OnePac Bancorp's operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the pro forma organization. The Board has reviewed the examination records of OnePac Bancorp, One PacificCoast Bank, and Albina Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and these organizations' records of compliance with applicable banking and anti-money-laundering laws. The Board also has considered One Pacific's plans for implementing the proposal, as well as the public comment received on the proposal. The commenters expressed concern regarding the ability of Applicants' management team to restore Albina Bank to profitability.<sup>24</sup>

OnePac Bancorp and One PacificCoast Bank are each considered to be well managed, and their senior management would continue in their roles following consummation of the proposed transaction. The directors and senior executive officers of OnePac Bancorp have substantial knowledge and experience in the banking and financial services sectors.

As noted, Albina Bank has been operating under a Consent Order since March 2, 2010, that requires Albina Bank, among other things, to increase its Tier 1 capital by such amount to ensure that its leverage ratio equals or exceeds 10 percent; maintain its total risk-based capital ratio at 12 percent or above; retain qualified management; reduce classified assets and CRE concentrations; maintain a fully funded allowance for loan and lease losses ("ALLL") and update its ALLL policy consistent with the Interagency Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions from July 2, 2001; improve its lending and credit administration policies; and adopt a three-year strategic plan.

OnePac Bancorp will devote significant financial and other resources to address all aspects of the Consent Order on consummation. OnePac Bancorp's investment in Albina Bank

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<sup>24</sup> The commenters also raised concerns as to whether the boards of directors of OnePac Bancorp and One PacificCoast Bank, respectively, could replace Ms. Taylor, the president and chief executive officer of OnePac Bancorp and One PacificCoast Bank, given the significant financial contributions she has made to augment the capital of those institutions. Ms. Taylor's service on the boards is similar to that of a majority shareholder of a bank holding company and does not raise heightened concerns in this case.

would bring Albina Bank into compliance with the capital requirements set forth in the Consent Order, and the recapitalization would enable Albina Bank to continue with the measures underway to improve asset quality, as required by the Consent Order. OnePac Bancorp is proposing to appoint two directors to Albina Bank's board of directors, which is expected to augment Albina Bank's management. In addition, OnePac Bancorp would advise Albina Bank with respect to its risk-management policies, procedures, and controls. The Board also has consulted with the FDIC, the primary federal supervisor of Albina Bank. The FDIC does not object to the proposed transaction.

The Board also has considered the future prospects of Applicants, One PacificCoast Bank, and Albina Bank, in light of the financial and managerial resources involved and the proposed business plan, including Applicants' proposal to operate One PacificCoast Bank and Albina Bank separately. In this regard, the Board has considered Applicants' successful integration of the banking operations of OneCalifornia Bank and ShoreBank Pacific in August 2010.<sup>25</sup> Applicants' integration record, financial and managerial resources, and plans for operating One PacificCoast Bank and Albina Bank after consummation provide a reasonable basis to conclude that future prospects are consistent with approval. Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors.

#### *B. Convenience and Needs Considerations*

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").<sup>26</sup> The Board must also review the records of performance under the CRA of the relevant insured depository institutions when acting on a notice under section 4 of the BHC Act to acquire voting securities of an insured savings association.<sup>27</sup>

The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,<sup>28</sup> and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.<sup>29</sup>

The Board has considered the convenience and needs factor and the CRA performance record of One PacificCoast Bank and Albina Bank in light of all the facts of record. As part of its consideration of convenience and needs, the Board has examined the CRA performance records of One PacificCoast Bank and Albina Bank. One PacificCoast Bank received a CRA rating of "satisfactory" from the Office of Thrift Supervision at its most recent CRA performance evaluation dated December 31, 2009. As noted above, One PacificCoast Bank has been a participant in the CDFI program, which provides funds for increasing community development activities in economically distressed communities.

<sup>25</sup> ShoreBank Pacific was a subsidiary of ShoreBank Corporation, a bank holding company, whose other subsidiary depository institution, ShoreBank, was closed by the Illinois Department of Financial & Professional Regulation in August 2010.

<sup>26</sup> 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

<sup>27</sup> *See, e.g., North Fork Bancorporation, Inc.*, 86 *Federal Reserve Bulletin* 767 (2000).

<sup>28</sup> 12 U.S.C. § 2901(b).

<sup>29</sup> 12 U.S.C. § 2903.

Albina Bank received a CRA rating of “satisfactory” from the FDIC at its most recent CRA performance evaluation dated June 1, 2011. Applicants have represented that the acquisition of Albina Bank by Applicants would allow Albina Bank to expand its existing CRA activities, such as providing financial counseling and assistance, administering Individual Development Accounts, collaborating with local nonprofit organizations, and extending credit to improve and stabilize neighborhoods. Based on a review of the entire record, the Board has concluded that considerations relating to convenience and needs considerations and the CRA performance records of the relevant insured depository institutions are consistent with approval.

### *C. Financial Stability*

The Board has considered information relevant to the risk to the stability of the United States banking or financial system. The Board generally presumes that a merger that involves an acquisition of less than \$2 billion in assets, or results in a firm with less than \$25 billion in total consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this case. The Board, therefore, concludes that financial stability considerations in this proposal are consistent with approval.

### **Public Benefits**

As noted above, the Board has also reviewed the proposal in accordance with the standards in sections 4(c)(8) and 4(j) of the BHC Act. The Board previously has determined by regulation that the operation of a savings association by a bank holding company is so closely related to banking as to be a proper incident thereto, for purposes of section 4(c)(8) of the BHC Act.<sup>30</sup> The Foundation would engage in community development activities<sup>31</sup> and activities related to extending credit, as well as operation of a savings association.<sup>32</sup> Specifically, the Foundation seeks to continue to provide funding and other support<sup>33</sup> to One PacificCoast Bank to support various community development programs, including One PacificCoast Bank’s loans to LMI individuals that serve as alternatives to payday and auto title loans, and micro loans to small businesses and nonprofit organizations in economically disadvantaged areas.<sup>34</sup> In addition, the Foundation seeks to continue to provide disadvantaged communities served by One PacificCoast Bank with access to financial education workshops and online business-building materials. The Foundation sponsors exchanges among business leaders designed to identify segments of disadvantaged communities served by One PacificCoast Bank where One PacificCoast Bank can provide products and financing. This program also serves as an educational tool for the Foundation’s board of directors and key staff about potential markets into which OnePac Bancorp could expand. Finally, the Foundation conducts research to identify gaps in the financing of under-

<sup>30</sup> 12 U.S.C. §§ 1843(c)(8) and 1843(j); 225.28(b)(4)(ii).

<sup>31</sup> Section 225.28(b)(12) of the Board’s Regulation Y authorizes bank holding companies to engage in community development activities.

<sup>32</sup> Section 225.28(b)(2) of the Board’s Regulation Y authorizes bank holding companies to engage in any activity usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit. 12 CFR 225.28(b)(2).

<sup>33</sup> For example, the Foundation has provided the development resources necessary for One PacificCoast Bank to launch the programs described herein and provides collateral for the loans that One PacificCoast Bank makes to LMI individuals and businesses operating in underserved areas under certain programs.

<sup>34</sup> The Foundation provides collateral to One PacificCoast Bank to make loans to LMI individuals and businesses operating in underserved communities, which would be permissible both as a community development activity under section 225.28(b)(12) of Regulation Y and as an activity usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit under section 225.28(b)(2).

banked communities where One PacificCoast Bank may further its mission through, among other activities, conducting focus group studies and retaining consultants to assist in designing programs that are relevant for a bank that has been certified as a CDFI (such as One PacificCoast Bank).

The Board previously has recognized the benefit of allowing bank holding companies to participate in community development activities based on their unique role in the community.<sup>35</sup> Under Regulation Y, the Federal Reserve Board has broadly construed the nature and scope of permissible community development activities.<sup>36</sup> Section 225.28(b)(12) of Regulation Y authorizes bank holding companies to (i) make equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas by providing housing, services, or jobs for residents; and (ii) provide advisory and related services for programs designed primarily to promote community welfare.<sup>37</sup> The Board previously has determined that activities similar to those in which the Foundation seeks to continue to engage are permissible community development activities or activities related to extending credit. Section 225.28(b)(12) also authorizes bank holding companies to invest in and provide financing to a CDFI, such as One PacificCoast Bank, that is organized and operated pursuant to section 103(5) of the Community Development Banking and Financial Institutions Act of 1994.<sup>38</sup>

In reviewing the proposal, the Board is required by section 4(j)(2)(A) of the BHC Act to determine that the proposal “can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system.”<sup>39</sup>

The Board expects that the proposed transaction would result in benefits to the public that outweigh any possible adverse effects from the transaction. The record indicates that consummation of the proposal would create a stronger and more diversified financial services organization and would provide the current and future customers of OnePac Bancorp and Albina Bank with expanded financial products and services. As noted previously, One PacificCoast Bank has been a participant in the CDFI program, which provides funds for increasing community development activities in economically distressed communities. The proposed acquisition of Albina Bank by Applicants would allow OnePac Bancorp to expand its community development activities to the markets served by Albina Bank to include financial counseling, education, and assistance activities, administering Individual Development Accounts, collaborating with local nonprofit organizations, and extending credit to individuals and small businesses in underserved communities to help improve and stabilize neighborhoods.

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<sup>35</sup> See 12 CFR 225.127 for the Board’s interpretation of permissible investments designed primarily to promote community welfare (“bank holding companies possess a unique combination of financial and managerial resources making them particularly suited for a meaningful and substantial role in remedying our social ills”).

<sup>36</sup> The Board noted that while the interpretation set forth in section 225.127 “primarily focuses on low- and moderate-income housing, it is not intended to limit projects under [section 225.28(b)(12)] to that area. Other investments primarily designed to promote community welfare are considered permissible but have not been defined, in order to provide bank holding companies flexibility in approaching community problems.” 12 CFR 225.127.

<sup>37</sup> 12 CFR 225.28(b)(12).

<sup>38</sup> 12 U.S.C. § 4702(5). See also 12 CFR 225.127(f). Therefore, the financial support that the Foundation proposes to provide to One PacificCoast Bank, a registered CDFI, to support various community development programs is permissible under section 225.28(b)(12).

<sup>39</sup> 12 U.S.C. § 1843(j)(2)(A).

For the reasons discussed above, and based on the entire record, the Board has determined that Applicants' continued operation of the savings association, and the Foundation's proposal to continue engaging in community development activities and activities related to extending credit within the framework of Regulation Y and Board precedent, are not likely to result in significantly adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or a significant risk to the stability of the United States banking or financial system that would outweigh the public benefits of the proposal discussed above.

Section 4(j)(2)(A) of the BHC Act also requires the Board to consider whether the proposal is likely to pose a significant risk to the stability of the United States banking or financial system. As described above, given the size of the entities involved in this transaction, the types of activities proposed, and the availability of substitute providers of the proposed financial services, this transaction would not result in a significant increase in the risk to or interconnectedness of the financial system. Based on these and all the other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Accordingly, the Board has determined that the balance of the public benefits under the standards of section 4(j)(2) of the BHC Act is consistent with approval of the proposal.

### **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 BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Applicants with all the conditions imposed in this order and the commitments made to the Board in connection with the proposal, including receipt of all required regulatory approvals. The Board's approval also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),<sup>40</sup> and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective September 25, 2013.

Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Tarullo, Raskin, Stein, and Powell.

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

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<sup>40</sup> 12 CFR 225.7 and 225.25(c).

## Order Issued Under Federal Reserve Act

Adams Bank & Trust  
Ogallala, Nebraska

*Order Approving Establishment of a Branch  
FRB Order No. 2013-6 (September 4, 2013)*

Adams Bank & Trust (“Adams Bank”), a state member bank subsidiary of ADBANC, Inc., both of Ogallala, Nebraska, has requested the Board’s approval under section 9 of the Federal Reserve Act (“Act”)<sup>1</sup> to establish a branch at 370 North Franklin Avenue in Colby, Kansas.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board’s Rules of Procedure.<sup>2</sup> The time for filing comments has expired, and the Board has considered the notice and all comments received in light of the factors specified in the Act.

Adams Bank is the 20th largest depository institution in Nebraska, controlling approximately \$331 million in deposits, which represents 0.6 percent of the total amount of deposits of insured depository institutions in the state.<sup>3</sup> Adams Bank’s main office is in Ogallala, with nine additional branches throughout western Nebraska. Adams Bank operates six branches in Colorado, and the proposed branch would be the first in Kansas.

Section 9(3) of the Act allows a state member bank to establish and operate branches, including a branch to be operated in a state other than the home state of the state member bank, on the same terms and conditions as a national bank.<sup>4</sup> As such, the Board may approve an application by a state member bank to establish a *de novo* interstate branch at any location at which a bank chartered by the host State could establish a branch.<sup>5</sup> Kansas, the prospective host State, would allow a Kansas-chartered bank to establish a branch in Colby.<sup>6</sup>

When acting on a branch application, the Board is required by section 9(4) of the Act to consider the financial condition of the applying bank, the general character of its management, and whether its corporate powers are consistent with the purposes of the Act.<sup>7</sup> Under the Board’s regulation implementing section 9(4),<sup>8</sup> 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 com-

<sup>1</sup> 12 U.S.C. § 321 *et seq.*

<sup>2</sup> 12 CFR 262.3(b).

<sup>3</sup> Data are as of June 30, 2012, the most recent available, and are updated to reflect mergers through that date. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

<sup>4</sup> 12 U.S.C. § 321. *See also* 12 U.S.C. § 36(g).

<sup>5</sup> 12 U.S.C. § 36(g)(1)(A), as amended by section 613(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The requirements of section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 for the establishment of a *de novo* interstate branch have also been met. Those provisions require that Adams Bank comply with State filing requirements and submit a copy of the branch application to the host State bank supervisor, and that the Board take into account Adams Bank’s compliance with community reinvestment laws and evaluate its capital and management. *See* 12 U.S.C. § 36(g)(2); 12 U.S.C. § 1831u(b)(1), (3), (4).

<sup>6</sup> Kan. Stat. Ann. § 9-1111(b)(1).

<sup>7</sup> 12 U.S.C. § 322.

<sup>8</sup> 12 CFR 208.6(b).

munity 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");<sup>9</sup> and (5) whether the bank's investment in bank premises in establishing the branch satisfies certain limitations.

The Board has considered the application in light of these factors and public comments received from prospective competing banks in Colby and from residents of the surrounding areas. The commenters assert that their community's demographic and economic characteristics would not profitably support another branch and that the area's financial services needs are adequately met by the financial institutions currently operating there.

In considering the financial history and condition, earnings prospects, and capital adequacy of Adams Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Adams Bank, and the comments received. Adams Bank is well-capitalized and would remain so on consummation of the proposal. The Board also has reviewed Adams Bank's business plan and financial projections for the branch, including the projections for deposits, income, and costs. After carefully considering all the facts of record, the Board has concluded that the financial history and condition, capital adequacy, and future earnings prospects of Adams Bank are consistent with approval of the proposal. The Board also has reviewed Adams Bank's proposed investment for a branch in Colby and concluded that its investment is consistent with regulatory limitations on investment in bank premises.<sup>10</sup>

In considering Adams Bank's managerial resources, the Board has reviewed the bank's examination record, including assessments of its management, risk-management systems, and operations. The Board also has considered its supervisory experiences with Adams Bank and the bank's record of compliance with applicable banking law, including anti-money laundering laws. Adams Bank is considered to be well-managed. Based on this review and all the facts of record, the Board has concluded that the character of Adams Bank's management is consistent with approval of the proposal.

The Board also has considered the convenience and needs of the community to be served, taking into account the comments received and the bank's performance under the CRA. Adams Bank received a "Satisfactory" rating by the Federal Reserve Bank of Kansas City at its most recent CRA performance evaluation, as of June 20, 2011.<sup>11</sup> The Board generally considers the entry of a new competitor in a community to be a positive factor when assessing the effect of a proposal on the convenience and needs of the community because new entry provides additional alternatives for consumers and businesses. Adams Bank represents that its business relationships already extend into northwest Kansas and that the proposed branch would allow it to better serve the residents of Colby and the surrounding communities.<sup>12</sup> For these reasons and based on a review of the entire record, the Board has concluded that the convenience and needs considerations and Adams Bank's record of performance under the CRA are consistent with approval of the proposal.

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

<sup>10</sup> 12 CFR 208.21(a).

<sup>11</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 of the institution's overall record of performance under the CRA by its appropriate federal supervisor. *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 (2010).

<sup>12</sup> For example, a branch in the region will allow Adams Bank: to offer long-term, fixed rate loans on agricultural real estate and homestead property exceeding 15 acres; to offer Farmer Mac loans, Health Savings Accounts and Health Access Accounts; and to provide a self-branded mobile banking application in the area.

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

Approval of this application is also subject to the establishment of the proposed branch within one year of the date of this order, unless such period is extended by the Board or the Federal Reserve Bank of Kansas City, acting under authority delegated by the Board.

By order of the Board of Governors, effective September 4, 2013.

Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Tarullo, Raskin, Stein, and Powell.

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*