



BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON, D. C. 20551

SCOTT G. ALVAREZ  
GENERAL COUNSEL

October 13, 2016

Mr. Rolando Mayans  
Chief Risk Officer  
Equity Bancshares, Inc.  
7701 E. Kellogg, Suite 200  
Wichita, Kansas 67207

Dear Mr. Mayans:

This letter responds to your request for confirmation that Equity Bancshares, Inc. ("Equity"), Wichita, Kansas, would not be deemed to control White River Bancshares Company, Inc. ("WRBC"), Fayetteville, Arkansas, for purposes of the Bank Holding Company Act of 1956, as amended ("BHC Act"), following consummation of the transactions described below.

In April 2005, the Federal Reserve Bank of St. Louis approved an application submitted pursuant to section 3(a)(3) of the BHC Act by Community First Bancshares, Inc. ("CFBI"), Harrison, Arkansas, to acquire 23.81 percent of the outstanding voting shares of WRBC and thereby to indirectly acquire WRBC's subsidiary bank, Signature Bank of Arkansas, Fayetteville, Arkansas.<sup>1</sup> CFBI was deemed to control WRBC for purposes of the BHC Act because CFBI owned approximately 23 percent of the outstanding voting shares of WRBC and had the right to appoint three members of the board of directors of WRBC.

On July 29, 2016, Equity submitted an application pursuant to section 3 of the BHC Act to merge with CFBI and thereby indirectly acquire CFBI's subsidiary bank, Community First Bank, Harrison, Arkansas (the "Proposed

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<sup>1</sup> See Letter dated April 7, 2005, from Carl K. Anderson, Assistant Vice President, Federal Reserve Bank of St. Louis, to Jerry Maland, Chairman and Chief Executive Officer, Community First Bancshares, Inc.

Merger”).<sup>2</sup> Consummation of the Proposed Merger is conditioned on CFBI disposing of all of its ownership in WRBC prior to or concurrently with the closing of the Proposed Merger. To satisfy this condition, CFBI will distribute all of its shares of WRBC directly and proportionately to CFBI’s shareholders prior to or concurrently with the closing of the Proposed Merger. Equity will not acquire any shares of WRBC in this transaction. Following this distribution, neither Equity nor CFBI would own, control, or hold with power to vote any voting securities or other equity instruments of WRBC.<sup>3</sup> CFBI will also terminate its right to appoint members of the board of WRBC at this time.

Equity does not currently own any interest in WRBC and would not acquire any interest in WRBC as a result of the Proposed Merger.<sup>4</sup> Additionally, Equity would not have: representation on the board of directors of WRBC or its affiliates; the right to appoint a director to or have representation on the board of directors of WRBC or its affiliates; or any employee, director, or officer interlocks with WRBC or its affiliates. Equity does not currently and would not, following consummation of the Proposed Merger, have any formal or informal agreements with WRBC or its affiliates relating to the management or policies of WRBC or its affiliates.

Neither Equity nor its affiliates currently have any business relationships with WRBC or its affiliates. As a result of the Proposed Merger, Equity would assume CFBI’s interests in two participation loans and one interest in real property of which WRBC would share common ownership. The interests in participation loans would represent approximately 0.30 percent and 1.07 percent of total loans for Equity and WRBC, respectively, following consummation of the

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<sup>2</sup> Shareholders of CFBI would receive cash and shares in Equity as consideration for the Proposed Merger. Following consummation, former CFBI shareholders would own approximately 24.7 percent of Equity’s outstanding shares. Those same former CFBI shareholders would own approximately 28.5 percent of WRBC’s outstanding shares.

<sup>3</sup> Current directors, officers, and employees of CFBI and their immediate family collectively own approximately 9.95 percent of WRBC’s outstanding shares. Each of these individuals would be employed by Equity in some capacity following consummation of the proposal.

<sup>4</sup> Additionally, no current director or officer of Equity, or any immediate family thereof, owns shares in WRBC. However, due to changes in Equity’s board that would result from the merger, approximately 4.27 percent of WRBC’s outstanding shares would be owned by directors of Equity and their immediate family following consummation of the proposal.

Proposed Merger.<sup>5</sup> The interest in real property would represent approximately 0.03 percent and 0.04 percent of total assets for Equity and WRBC, respectively, following consummation of the Proposed Merger.<sup>6</sup> Equity does not have any other current or planned business relationships with WRBC or its affiliates.

For purposes of the BHC Act, a company has control over another company if the first company (i) directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company; (ii) controls in any manner the election of a majority of the directors of the other company; or (iii) directly or indirectly exercises a controlling influence over the management or policies of the other company.<sup>7</sup> The Board's Regulation Y also sets forth a set of rebuttable presumptions of control.<sup>8</sup> The BHC Act and Regulation Y presume that any company that directly or indirectly owns, controls, or has the power to vote less than 5 percent of any class of voting securities of a bank or other company does not control the bank or other company.<sup>9</sup>

In determining whether a company has the power to exercise a controlling influence over another company, the Board typically has considered a number of factors, including the size and structure of the company's voting and total equity investment; the company's rights to director, employee, and other representation and committee service; any management, employee, or director interlocks between the companies; any covenants or other agreements that allow the first company to influence or restrict the management decisions of the other company; the nature and scope of the business relationships between the companies; and other indicia of the ability or incentive to exercise a controlling influence.<sup>10</sup>

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<sup>5</sup> Signature Bank of Arkansas was the originator and seller of these participation loans.

<sup>6</sup> Equity would own 75 percent of the property and WRBC would own the remaining 25 percent of the property. The property is worth approximately \$733,000.

<sup>7</sup> 12 U.S.C. § 1841(a)(2); 12 CFR 225.2(e).

<sup>8</sup> See 12 CFR 225.31(d).

<sup>9</sup> See 12 U.S.C. § 1841(a)(3) and 12 CFR 225.31(e).

<sup>10</sup> See Policy Statement on equity investments in banks and bank holding companies (September 22, 2008), available at [www.federalreserve.gov/newsevents/press/bcreg/20080922c.htm](http://www.federalreserve.gov/newsevents/press/bcreg/20080922c.htm).

The Board has previously found that a company that controlled another company for a significant period may be able to exert a controlling influence over the company even after a substantial divestiture.<sup>11</sup> As a result, the Board has generally applied a stricter standard for determining non-control in divestitures cases than the standard applied when a company seeks to establish that a de novo investment in another company is non-controlling. Thus, in determining whether a reduction in ownership is effective to terminate an existing control relationship, the Board has placed significant weight on the size of any voting investment retained by the divesting company and the ongoing relationships between the divesting company and the company being divested.<sup>12</sup> The Board has paid particular attention to the size and qualitative importance of the business relationships to each counterparty, and whether the business relationships are on market terms, non-exclusive, and terminable without penalty by the banking organization.<sup>13</sup>

As noted, Equity would not own, control, or hold with power to vote any shares of WRBC following consummation of the Proposed Merger. Directors, officers, and employees of Equity who previously were directors, officers, or employees of CFBI would retain shares of WRBC. However these shares were acquired in connection with their affiliation with CFBI and collectively represent less than 10 percent of the outstanding shares of WRBC. In addition, these shares would not be funded by Equity and would not be held on behalf of Equity. Further, Equity would not own any shares of WRBC, or have any right to appoint members of the board of directors of, or employee or director interlocks with, WRBC following the Proposed Merger. Under these circumstances, Equity would not trigger any of the presumptions of control in the BHC Act or Regulation Y with respect to WRBC.

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<sup>11</sup> See, e.g., C.I.T. Financial Corporation, 65 Federal Reserve Bulletin 369 (1979); 65 Federal Reserve Bulletin 440; Letter from the Board to Anne R. Williams, Esq., Steptoe & Johnson, dated June 4, 1985.

<sup>12</sup> Id.; See also Letter from Scott G. Alvarez, General Counsel of the Board, to Richard W. Decker, Jr., Belvedere Capital Partners II, LLC, dated April 5, 2010.

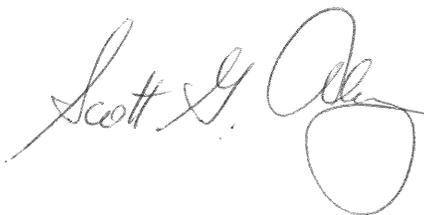
<sup>13</sup> See Letter from Scott G. Alvarez, General Counsel of the Board, to Luigi L. De Ghenghi, Esq., Davis Polk & Wardwell LLP, dated January 28, 2016; Letter from Robert deV. Frierson, Deputy Secretary of the Board, to Mark Menting, Esq., Sullivan & Cromwell, LLP, dated February 14, 2012.

Equity's business relationships with WRBC following consummation of the Proposed Merger would be *de minimis* relative to the size of each organization's assets, and Equity does not propose to establish any new business relationships with WRBC or its affiliates following consummation of the Proposed Merger.

Based on all the facts of record in this case, and specifically conditioned on compliance with all the representations and commitments made in connection with your request, Board staff would not recommend that the Board find Equity to control WRBC for purposes of the BHC Act upon consummation of the Proposed Merger.

This opinion is based on all the facts of record, including all the representations and commitments made by or on behalf of Equity or CFBI, whether noted in this letter or otherwise contained in your correspondence with the Board or the Federal Reserve Bank of St. Louis. Any change in the terms or circumstances of the transaction may result in a different opinion and should be reported immediately. If you have any questions about this matter, please contact Steve Bowne, Senior Attorney (202-452-3900), or Mary Watkins, Attorney (202-452-3722), both of the Board's Legal Division.

Sincerely,

A handwritten signature in cursive script that reads "Scott G. Allen". The signature is written in dark ink and is positioned below the word "Sincerely,".