



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

SCOTT G. ALVAREZ
GENERAL COUNSEL

November 14, 2016

John R. Reisner, Esq.
Executive Vice President and General Counsel
First Defiance Financial Corporation
601 Clinton Street
Defiance, Ohio 43512-2636

Dear Mr. Reisner:

This is in response to your letter, dated November 1, 2016, and received on November 3, to the Federal Reserve Bank of Cleveland requesting waivers from filing requirements under the Bank Holding Company Act of 1956 (“BHC Act”)¹ and the Home Owners’ Loan Act (“HOLA”)² for First Defiance Financial Corporation (“First Defiance”), Defiance, Ohio, a savings and loan holding company, to acquire Commercial Bancshares, Inc. (“Commercial”), a financial holding company, and thereby indirectly acquire its wholly-owned subsidiary state nonmember bank, The Commercial Savings Bank (“Commercial Bank”), both of Upper Sandusky, Ohio.

The purpose of the proposed transaction is to facilitate the merger of Commercial Bank with and into First Defiance’s wholly-owned subsidiary savings association, First Federal Bank of the Midwest (“First Federal Bank”), Defiance, Ohio. The transaction would occur as follows: (1) Commercial would merge with and into First Defiance, with First Defiance as the resulting entity; and (2) immediately thereafter, Commercial Bank would merge with and into First Federal Bank, with First Federal Bank as the resulting entity (“Depository Institution Merger”). You have indicated that Commercial Bank would exist as a wholly-owned subsidiary of First Defiance for only a moment in time and that Commercial Bank would never operate as a separate subsidiary of First Defiance.

Sections 3 and 4 of the BHC Act and the Board’s Regulation Y require an application and notice, respectively, to the Board before a company takes any action that

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1461 *et seq.*

causes the company to become a bank holding company³ and before a bank holding company may acquire more than 5 percent of the voting shares of any nonbanking company.⁴ Through the transaction described above, First Defiance would become a bank holding company for a moment in time through its acquisition of Commercial and Commercial Bank. In addition, as a bank holding company for a moment in time, First Defiance would control First Federal Bank, a nonbanking company under the BHC Act. Accordingly, First Defiance would be required to obtain the Board's approval under sections 3 and 4 of the BHC Act before acquiring Commercial and Commercial Bank.

Section 10(e) of HOLA and the Board's Regulation LL require the Board's approval before a company may take any action that causes such company to become a savings and loan holding company.⁵ Through the transaction described above, First Defiance would become a savings and loan holding company immediately after the Depository Institution Merger since it would no longer control a bank under the BHC Act but would continue to control a savings association. Accordingly, First Defiance would be required to obtain the Board's approval under section 10(e) of HOLA after the Depository Institution Merger.

In certain circumstances, however, in order to avoid duplication of regulatory review by federal banking regulators, the Board's rules provide that a bank holding company seeking to acquire shares or control of a bank and a savings and loan holding company seeking to acquire control of a savings association need not obtain the Board's prior approval. Specifically, section 225.12(d)(2) of the Board's Regulation Y and section 238.12(d)(1) of the Board's Regulation LL, respectively, provide that a bank holding company and savings and loan holding company need not receive the Board's approval if the transaction is subject to review by a federal banking agency under section 18(c) of the Federal Deposit Insurance Act (the "Bank Merger Act"),⁶ and meets certain other criteria.⁷ While section 225.12(d)(2) does not apply specifically to transactions that involve a savings and loan holding company acquiring control of a bank and a bank holding company acquiring control of a nonbanking company, and section 238.12(d)(1) does not apply specifically to transactions that involve a bank holding company becoming a savings and loan holding company, your proposal is consistent with the

³ 12 U.S.C. § 1842(a); 12 CFR 225.11.

⁴ 12 U.S.C. § 1843(c)(8); 12 CFR 225.24.

⁵ 12 U.S.C. § 1467a(e); 12 CFR 238.11.

⁶ 12 U.S.C. § 1828(c).

⁷ 12 CFR 225.12(d)(2); 12 CFR 238.12(d)(1).

purposes of section 225.12(d)(2) of the Board's Regulation Y and section 238.12(d)(1) of the Board's Regulation LL.

The Depository Institution Merger requires the prior approval of the Office of the Comptroller of the Currency ("OCC") under the Bank Merger Act.⁸ In acting on the merger proposal, the OCC must consider the impact the acquisition would have on competition, the financial and managerial resources and future prospects of the combined organization, the convenience and needs of the communities served by Commercial Bank and First Federal Bank, the institutions' records of performance under the Community Reinvestment Act, the institutions' effectiveness in combating money laundering activities, and risks to the stability of the United States banking or financial system.⁹ These criteria are substantially similar to the criteria the Board would consider under the BHC Act¹⁰ and HOLA.¹¹

Additionally, First Defiance would exist as a bank holding company only for the short time necessary to merge Commercial Bank into First Federal Bank. At no time would Commercial Bank operate as a separate subsidiary of First Defiance. Following the transaction, the separate corporate existence of Commercial Bank would cease, and First Defiance would remain a savings and loan holding company and First Federal Bank would continue to operate as a savings association. Under these circumstances, review of the transaction under sections 3 and 4 of the BHC Act and section 10 of HOLA would be substantially duplicative of the review under the Bank Merger Act.

⁸ 12 U.S.C. § 1828(c). First Federal Bank filed a Bank Merger Act application with the OCC on October 25, 2016, requesting prior approval of the Depository Institution Merger. First Defiance has provided the Board with a copy of the application.

⁹ 12 U.S.C. §§ 1828(c)(5) and (11), 2902(3)(E), 2903(a)(2).

¹⁰ See 12 U.S.C. § 1842(c); 12 CFR 225.13.

¹¹ See 12 U.S.C. § 1467a(e)(2); 12 CFR 238.15.

Based on a review of these and other facts presented, the Legal Division believes that no regulatory purpose would be served by requiring First Defiance to file an application or notice under the BHC Act or an application under HOLA for the proposed transaction. The Legal Division, therefore, would not recommend that the Board take action to require a filing of a formal application or notice by First Defiance in connection with the transaction described above. This opinion is subject to the receipt by First Defiance, First Federal Bank, Commercial, and Commercial Bank of all other necessary regulatory approvals and compliance with any terms and conditions that may be imposed upon approval of the proposal.

This opinion is based on all the facts and representations presented to Federal Reserve staff. Any material change in those facts or representations should be communicated immediately to Federal Reserve staff and may cause this opinion to be reconsidered. This opinion is limited to this proposal and does not apply to any other transaction.

If you have any questions regarding this matter, please contact Derald Seid at (202) 452-2246 or Evans Muzere at (202) 452-2621, of my staff.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott G. Olin", with a large circular flourish at the end.

cc: Office of the Comptroller of the Currency