FRB Order No. 2015-12
March 23, 2015

FEDERAL RESERVE SYSTEM

KSRS, LLC
Osceola, Missouri

Order Approving the Formation of a Bank Holding Company

KSRS, LLC ("KSRS"), Osceola, Missouri, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to become a bank holding company by retaining 32.11 percent of the voting shares of Bancorp II, Inc. ("Bancorp"), Kansas City, Missouri, and thereby indirectly retaining control of its subsidiary bank, Citizens Community Bank, Pilot Grove, Missouri.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (79 Federal Register 32956 (2014)).[2] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

KSRS is a newly organized limited liability company formed for the purpose of acquiring control of Bancorp. Bancorp, with consolidated assets of approximately $106.2 million, is the 4,455th largest insured depository organization in the United States, controlling approximately $94.9 million in deposits.[3] Bancorp operates only in Missouri. Citizens Community Bank is the 186th largest insured depository institution in Missouri,

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[1] 12 U.S.C. § 1842(a)(1).

[2] 12 CFR 262.3(b).

[3] Asset and nationwide deposit-ranking data are as of December 31, 2014, unless otherwise noted.

controlling deposits of approximately $94.9 million, which represent less than 1 percent of total deposits of insured depository institutions in that state.[4]

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.[5]

The Department of Justice has conducted a review of the potential competitive effects of the proposal and advised the Board that it does not believe that consummation of the proposal is likely to 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.

KSRS did not previously control a depository institution and does not currently control any other depository institution. 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 any relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.

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[4] State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

[5] 12 U.S.C. § 1842(c)(1).

In its evaluation of financial factors, the Board reviews the financial condition of the organizations involved, 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 also evaluates the effect of the transaction on the financial condition of the applicant, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

On consummation of the proposal, KSRS would be in compliance with relevant capital standards. In addition, Citizens Community Bank is well capitalized. The transaction is structured as a cash purchase funded from capital contributions made to KSRS by its principals. In addition, future prospects are considered consistent with approval. Based on its review of the record, the Board finds that KSRS has sufficient financial resources to effect the proposal and to comply with the Board's Small Bank Holding Company Policy Statement.[6]

The Board also has considered the managerial resources of the applicant and the public comment received on the proposal. The Board received a comment objecting to the proposal principally on grounds involving the manner in which KSRS acquired the Bancorp shares. KSRS acquired from another financial institution a defaulted note (the "Note") on which the commenter was the obligor, secured by 32.11 percent of Bancorp shares. The commenter also opposed the proposal on several other grounds related to alleged actions of KSRS and its principals. In particular, the

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[6] KSRS would be a small bank holding company after acquiring control of Bancorp and would be subject to the Small Bank Holding Company Policy Statement. 12 CFR 225, appendix C.

commenter alleged that, prior to acquiring the Note, the principals of KSRS violated the Change in Bank Control Act ("CIBC Act")[7] when, acting in concert with a group of investors in 2011, they acquired shares of Bancorp without regulatory approval.[8] The commenter also argued that one of the principals of KSRS breached his fiduciary duties to Bancorp by using information gained in his capacity as a Bancorp director to purchase the Note.[9]

In considering the managerial resources of the applicant, the Board also considered information provided by the applicant. As an initial matter, the Board notes that an acquisition of a loan in default that is secured by voting securities of a state

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[7] 12 U.S.C. § 1817(j).

[8] A person or persons acting in concert must seek the Board's approval prior to acquiring control of a state member bank or bank holding company. See 12 CFR 225.41(c)(1). The Board considers an acquisition of 25 percent or more of any class of voting securities to be an acquisition of control requiring prior approval, and also presumes that there is an acquisition of control when a person or persons acting in concert acquire 10 percent or more of any class of voting securities of an institution and no other person will own, control, or hold the power to vote a greater percentage of any class of that institution's voting securities. See 12 CFR 225.41(c)(1) and (c)(2)(ii). Based on the evidence in the record, even assuming the various parties identified by the commenter were a group acting in concert in 2011, this group in the aggregate owned less than 25 percent of the voting securities of Bancorp and another shareholder owned a greater percentage of Bancorp's shares. Thus, the control definition and presumptions would not appear to have been triggered. In light of the evidence in the record and the Board's rules and presumptions of control, there is insufficient evidence to conclude that the principals of KSRS violated the CIBC Act in 2011.

[9] The commenter also alleged that the auction that KSRS held to sell the Bancorp shares securing the Note was not conducted in a commercially reasonable manner. KSRS represents that it appropriately exercised its rights under the terms of the Note and conducted the auction in accordance with state law. The commenter also claimed that KSRS violated the terms of a shareholder agreement when conducting the auction and that KSRS's purchase of the Note injured shareholders by preventing the sale of Bancorp to another potential purchaser. These allegations relate to private disputes involving state contract and corporate law and may be adjudicated by a court with competent jurisdiction. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973).

member bank or bank holding company is considered an acquisition of those securities.[10] KSRS represented that its principals were unaware that acquiring the Note required prior approval of the Federal Reserve under the BHC Act or the CIBC Act. KSRS stated that its principals thought, based on advice received from a bank regulatory consultant, that regulatory approval would only be required prior to directly acquiring Bancorp shares.

After acquiring the Note, KSRS conducted a public auction for the Bancorp shares in which it was the winning bidder. Under the terms of the auction, the winning bidder cannot consummate the transaction until receiving regulatory approval to acquire the shares. Accordingly, KSRS filed the BHC Act application following the auction.

KSRS represents that its principal acquired information about the Note in his personal capacity and that he did not use his position as a director of Bancorp to benefit KSRS in the transaction. Further, KSRS represents that, prior to acquiring the Note, its principal informed Bancorp's shareholders and directors about the opportunity to purchase the Note, and they declined the opportunity.

The Board has also considered documents concerning the manner in which KSRS acquired the Note and conducted the auction, disclosures made by KSRS to Bancorp's board of directors and shareholders regarding the Note and the auction, and state law requirements. The Board also considered the regulatory guidance received by KSRS's principals, and commitments made by KSRS to the Board. Further, the Board has considered confidential supervisory information regarding KSRS and Bancorp, its supervisory experiences with the principals of KSRS and their records of compliance with applicable banking and anti-money-laundering laws, as well as KSRS's plan for the acquisition. KSRS has committed to seek advice from appropriate regulatory agencies and third-party banking or professional advisors prior to making any future investments in any other bank or bank holding company stock.

The Board has reviewed the examination records of Bancorp and Citizens Community Bank, including assessments of their management, risk-management

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[10] 12 CFR 225.41(e).

systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

Bancorp and Citizens Community Bank are both considered to be well managed. Bancorp's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of Bancorp have substantial knowledge of and experience in the banking and financial services sectors. KSRS represents that it has no plans to effect significant changes in management at either Bancorp or Citizens Community Bank.

Based on all the facts and circumstances, the Board concludes that managerial resources are consistent with approval. In addition, KSRS's managerial and operational resources, as well as the supervisory record of Bancorp and Citizens Community Bank, provide a reasonable basis on which to conclude that future prospects are consistent with approval.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved, as well as the records of effectiveness of Bancorp and Citizens Community Bank in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board 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").[11] 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

[11] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 et seq.

sound operation,[12] 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.[13]

The Board has considered all the facts of record, including reports of examination of the CRA performance of Citizens Community Bank, other information provided by KSRS, and confidential supervisory information.

A. Records of Performance Under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisor of the CRA performance records of that institution.[14] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[15] 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.

CRA Performance of Citizens Community Bank

Citizens Community Bank was assigned an overall rating of "satisfactory" at its most recent CRA performance evaluation by the FDIC in March 2014.[16] Examiners determined that the bank's average quarterly net loan-to-deposit ratio was reasonable

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[12] 12 U.S.C. § 2901(b).

[13] 12 U.S.C. § 2903.

[14] See Interagency Questions and Answers Regarding Community Reinvestment, 75 Federal Register 11642 at 11665 (2010).

[15] 12 U.S.C. § 2906.

[16] Citizens Community Bank's CRA evaluation was conducted using Small Institution CRA Examination Procedures, and examiners reviewed the bank's lending activity from December 8, 2008, through March 10, 2014.

given the bank's asset size, financial condition, and assessment area credit needs. In addition, examiners found that a majority of loans sampled were made within the assessment area, illustrating a reasonable commitment to meeting the credit needs of the local community. Examiners also noted that the bank's geographic distribution of lending reflected a reasonable dispersion throughout the assessment area. Further, the bank's lending distribution to borrowers reflected excellent penetration among farm operations of different sizes and individuals of different income levels, as well as reasonable penetration among commercial businesses of different sizes.

B. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

KSRS represents that this proposal allows Bancorp and Citizens Community Bank to continue to be locally controlled, and that the acquisition of the Note stabilized ownership of Bancorp. Further, KSRS has no plans to effect significant changes in management at either organization. KSRS believes that such continuity in ownership and management is in the best interests of the communities served by Citizens Community Bank. Further, KSRS represents that Citizens Community Bank has historically received satisfactory ratings during its CRA examinations and that it does not anticipate undertaking any new programs, activities, or products that would undermine its consistently satisfactory ratings.

C. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the reports of examination of the CRA record of the institution involved, information provided by KSRS, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of Citizens Community Bank, review of examination reports, consultations with other agencies, and all the facts of record, the Board concludes that the convenience and needs factor, including the CRA

record of the insured depository institution involved in this transaction, is consistent with approval of the application.

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 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."[17]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[18] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[19]

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[17] 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).

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

[19] For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order No. 2012-2 (Feb. 14, 2012).

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Bancorp would have approximately $106.2 million in consolidated assets and would not be likely to pose systemic risks. The Board generally presumes that a merger or acquisition resulting in a firm with less than $25 billion in consolidated assets would 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 transaction.

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

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application 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 KSRS with all the conditions imposed in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

By order of the Board of Governors,[20] effective March 23, 2015.

Margaret McCloskey Shanks (signed)

Margaret McCloskey Shanks
Deputy Secretary of the Board

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