

FEDERAL RESERVE SYSTEM

First Horizon National Corporation  
Memphis, Tennessee

Order Approving the Merger of Bank Holding Companies

First Horizon National Corporation (“First Horizon”), Memphis, Tennessee, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),<sup>1</sup> has requested the Board’s approval under section 3 of the BHC Act<sup>2</sup> to merge with Capital Bank Financial Corp. (“CBFC”), Charlotte, North Carolina, and thereby indirectly acquire CBFC’s subsidiary bank, Capital Bank Corp. (“Capital Bank”), Raleigh, North Carolina. Following the proposed merger, Capital Bank would be merged into First Horizon’s subsidiary bank, First Tennessee Bank, National Association (“First Tennessee Bank”), also of Memphis, Tennessee.<sup>3</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 Federal Register 28659 (June 23, 2017)).<sup>4</sup> The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

First Horizon, with consolidated assets of approximately \$29.4 billion, is the 64th largest insured depository organization in the United States. First Horizon

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<sup>1</sup> 12 U.S.C. § 1841 et seq.

<sup>2</sup> 12 U.S.C. § 1842.

<sup>3</sup> The merger of Capital Bank into First Tennessee Bank, which is expected to occur immediately after First Horizon’s merger with CBFC, is subject to the approval of the Office of the Comptroller of the Currency (“OCC”), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The OCC approved the bank merger on October 16, 2017.

<sup>4</sup> 12 CFR 262.3(b).

controls approximately \$22.3 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>5</sup> First Horizon controls First Tennessee Bank, which operates in Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. First Horizon is the largest insured depository organization in Tennessee, controlling deposits of approximately \$19.8 billion, which represent 14.3 percent of the total deposits of insured depository institutions in that state. First Horizon is the 31st largest insured depository organization in North Carolina, controlling deposits of approximately \$542.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. First Horizon is the 117th largest insured depository organization in Virginia, controlling deposits of approximately \$14.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. First Horizon is the 82nd largest insured depository organization in South Carolina, controlling deposits of approximately \$11.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. First Horizon is the 220th largest insured depository organization in Florida, controlling deposits of approximately \$1.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.<sup>6</sup>

CBFC, with consolidated assets of approximately \$10.1 billion, is the 127th largest insured depository organization in the United States. CBFC controls approximately \$8.1 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. CBFC controls Capital Bank, which operates in Florida, North Carolina, South Carolina, Tennessee, and Virginia. CBFC is the 15th largest insured depository organization in Tennessee, controlling deposits of approximately \$1.5 billion, which represent 1.1 percent of the total deposits of insured depository institutions in that state. CBFC is the 9th largest

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<sup>5</sup> Nationwide asset and deposit data are as of June 30, 2017, unless otherwise noted.

<sup>6</sup> State deposit data are as of June 30, 2016, unless otherwise noted.

insured depository organization in North Carolina, controlling deposits of approximately \$4.4 billion, which represent 1.3 percent of the total deposits of insured depository institutions in that state. CBFC is the 29th largest insured depository organization in South Carolina, controlling deposits of approximately \$370.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. CBFC is the 39th largest insured depository organization in Florida, controlling deposits of approximately \$1.6 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state. CBFC is the 111th largest insured depository organization in Virginia, controlling deposits of approximately \$26.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, First Horizon would become the 54th largest insured depository organization in the United States, with consolidated assets of approximately \$40 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. First Horizon would control total deposits of approximately \$30.4 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Tennessee, First Horizon would remain the largest insured depository organization, controlling deposits of approximately \$21.3 billion, which represent approximately 15.4 percent of the total deposits of insured depository institutions in that state. In North Carolina, First Horizon would become the 8th largest insured depository organization, controlling deposits of approximately \$4.9 billion, which represent 1.4 percent of the total deposits of insured depository institutions in that state. In South Carolina, First Horizon would become the 28th largest insured depository organization, controlling deposits of approximately \$381.8 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Florida, First Horizon would become the 39th largest insured depository organization, controlling deposits of approximately \$1.6 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Virginia, First Horizon would become the 104th largest

insured depository organization, controlling deposits of approximately \$40.6 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

#### Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company, without regard to whether the transaction is prohibited under state law.<sup>7</sup> Under this section, 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 if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.<sup>8</sup> In addition, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, the bank holding company, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.<sup>9</sup>

For purposes of the BHC Act, the home state of First Horizon is Tennessee, and Capital Bank is located in North Carolina, South Carolina, Tennessee, Virginia, and Florida.<sup>10</sup> First Horizon is well capitalized and well managed under applicable law, and

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

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

<sup>9</sup> 12 U.S.C. § 1842(d)(2)(A) and (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. See 12 U.S.C. § 1841(o)(4)–(7).

<sup>10</sup> See 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on

First Tennessee Bank has a “Satisfactory” rating under the Community Reinvestment Act of 1977 (“CRA”).<sup>11</sup> There are no minimum age requirements under the laws of North Carolina, South Carolina, Virginia, or Florida that would apply to First Horizon’s acquisition of CBFC, and Capital Bank has been in existence for more than five years.<sup>12</sup>

On consummation of the proposed transaction, First Horizon would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, First Horizon would not control 30 percent or more of the total deposits of insured depository institutions in any state in which First Horizon and CBFC have overlapping banking operations.<sup>13</sup> The Board has considered all other requirements under section 3(d) of the BHC Act, including First Tennessee Bank’s record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.

#### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.<sup>14</sup> The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are

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July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

<sup>11</sup> 12 U.S.C. § 2901 et seq.

<sup>12</sup> See N.C. Gen. Stat. ch. 53C; S.C. Code Ann. §§ 34-25-50 and 34-25; Va. Code Ann. § 6.2-849 – 859; Fla. Stat. § 658.2953.

<sup>13</sup> Tennessee, South Carolina, and Florida impose a 30 percent limit on deposit concentration within their states. See Tenn. Code Ann § 45-2-1404; S.C. Code Ann. § 34-25-240; Fla. Stat. § 658.2953(5)(b). North Carolina and Virginia do not have any such restrictions.

<sup>14</sup> 12 U.S.C. § 1842(c)(1).

clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.<sup>15</sup>

First Horizon and CBFC have subsidiary depository institutions that compete directly in 11 banking markets in North Carolina, South Carolina, and Tennessee.<sup>16</sup> The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the number of competitors that would remain in each market; the relative share of total deposits in insured depository institutions in each market (“market deposits”) that First Horizon would control;<sup>17</sup> the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);<sup>18</sup> other characteristics

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<sup>15</sup> 12 U.S.C. § 1842(c)(1)(B).

<sup>16</sup> All of these banking markets are defined in the Appendix, except for the Greene County banking market (“Greene County market”); the Lawrence County banking market (“Lawrence County market”); and the Morristown area banking market (“Morristown area market”), all in Tennessee, which are defined in the discussion below.

<sup>17</sup> Local deposit and market share data are as of June 30, 2016, and, unless otherwise indicated, are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

<sup>18</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 the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not

of the markets; and, as discussed below, commitments made by First Horizon to divest two Capital Bank branches in the Greene County market.

*Banking Markets Within Established Guidelines*

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Johnson City-Bristol, Knoxville, Nashville, Sevierville, Raleigh, Winston-Salem, Charlotte, and Charleston markets.<sup>19</sup> On consummation of the proposal, the change in the HHI in the Nashville market would be small, and the market would remain unconcentrated. The change in the HHI in the Johnson City-Bristol, Knoxville, Sevierville, Raleigh, and Charleston markets would be small, and the markets would remain moderately concentrated. The Winston-Salem and Charlotte markets would remain highly concentrated, but the changes in the HHI in these markets would be small. In each of these banking markets, numerous competitors would remain.

*Banking Markets Warranting Special Scrutiny*

The structural effects that consummation of the proposal would have in the Greene County, Lawrence County, and Morristown area markets warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines when using initial competitive screening data.

Greene County, Tennessee, Banking Market. Using initial screening data, First Horizon is the third largest depository organization in the Greene County market, controlling approximately \$181.7 million in deposits, which represent approximately 22.5 percent of market deposits.<sup>20</sup> CBFC is the largest depository organization in the Greene County market, controlling approximately \$211.6 million in deposits, which represent approximately 26.2 percent of market deposits. On consummation, First

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modified. See Press Release, Department of Justice (August 19, 2010), available at [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

<sup>19</sup> The competitive effects of the proposal in these markets are described in the Appendix.

<sup>20</sup> The Greene County market is defined as Greene County, Tennessee.

Horizon would become the largest depository organization in the Greene County market, controlling approximately \$359.6 million in market deposits, which would represent approximately 48.6 percent of market deposits. The HHI in this market would increase by 1175 points, from 1981 to 3156.

To mitigate the potentially adverse competitive effects of the proposal in the Greene County market, First Horizon has committed to divest two of Capital Bank's six branches in the Greene County market to a competitively suitable purchaser.<sup>21</sup> In addition to the divestiture, the Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Greene County market.<sup>22</sup> The competitive effects are mitigated by several factors that indicate that the increase in concentration in the Greene County market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market. One thrift institution in the market has a commercial and industrial loan portfolio similar to those of commercial banks in the Greene County market,<sup>23</sup> as measured in terms of the ratios of those types of

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<sup>21</sup> As a condition of consummating the proposal, First Horizon has committed that it will execute, before consummation of the proposal, a sales agreement with a competitively suitable institution for the sale of the two branches. First Horizon also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, First Horizon has committed that, if the proposed divestiture is not completed within the 180-day period, First Horizon would transfer the unsold branches to an independent trustee, who would be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchasers must be deemed acceptable to the Board. See, e.g., BankAmerica Corporation, 78 Federal Reserve Bulletin 338 (1992); United New Mexico Financial Corporation, 77 Federal Reserve Bulletin 484 (1991).

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

<sup>23</sup> The standard treatment of thrifts in the competitive analysis is to give their deposits 50-percent weighting to reflect their limited lending to small businesses relative to banks' lending levels. However, the Board previously has indicated that it may consider the competitiveness of a thrift institution at a level greater than 50 percent of its deposits

loans to total loans and assets.<sup>24</sup> The Board has concluded that deposits controlled by this institution should be weighted at 100 percent in the market-share calculations.

In addition, two credit unions exert a competitive influence in the Greene County market. Both institutions offer a wide range of consumer banking products, operate street-level branches, and have broad membership criteria that include almost all of the residents in the market.<sup>25</sup> The Board finds that these circumstances warrant including the deposits of these credit unions at a 50-percent weight in estimating market influence. This weighting takes into account the limited lending done by these credit unions to small businesses relative to commercial banks' lending levels.

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when appropriate if competition from the institution closely approximates competition from a commercial bank. See, e.g., Banknorth Group, Inc., 75 Federal Reserve Bulletin 703 (1989). Where, as here, the facts and circumstances of a banking market indicate that a particular thrift serves as a significant source of commercial loans and provides a broad range of consumer, mortgage, and other banking products, the Board has concluded that competition from such a thrift closely approximates competition from a commercial bank and that deposits controlled by the institution should be weighted at 100 percent in market-share calculations. See, e.g., KeyCorp, FRB Order No. 2016-12 (July 12, 2016); River Valley Bancorp, FRB Order No. 2012-10 (October 17, 2012); Regions Financial Corporation, 93 Federal Reserve Bulletin C16 (2007); and Banknorth Group, Inc., *supra*.

<sup>24</sup> This thrift institution has a ratio of commercial and industrial loans to assets of 9.6 percent. This is comparable to the ratio of some thrift institutions that the Board has previously found to be full competitors of commercial banks. Id.

<sup>25</sup> The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. See, e.g., KeyCorp, FRB Order No. 2016-12 (July 12, 2016); Ohio Valley Banc Corp., FRB Order No. 2016-10 (June 28, 2016); Mitsubishi UFJ Financial Group, Inc., FRB Order No. 2012-12 (November 14, 2012); Old National Bancorp, FRB Order No. 2012-9 (August 30, 2012); United Bankshares, Inc. (order dated June 20, 2011), 97 Federal Reserve Bulletin 19 (2nd Quar. 2011); The PNC Financial Services Group, Inc., 94 Federal Reserve Bulletin C38 (2008); The PNC Financial Services Group, Inc., 93 Federal Reserve Bulletin C65 (2007); Regions Financial Corporation, 93 Federal Reserve Bulletin C16 (2007); Passumpsic Bancorp, 92 Federal Reserve Bulletin C175 (2006); and Wachovia Corporation, 92 Federal Reserve Bulletin C183 (2006).

After accounting for the branch divestitures and weighting the deposits of the thrift at 100 percent and the credit unions at 50 percent, First Horizon would control approximately 34.5 percent of market deposits, and the HHI would increase by 486 points to a level of 1934.<sup>26</sup> Although the adjusted levels still exceed the DOJ Bank Merger Guidelines, certain factors indicate that the competitive effects of the proposal would not likely be significantly adverse. After consummation of the proposal, a minimum of seven depository institutions would remain in the Greene County market. Further, First Horizon and CBFC engage in low levels of small business lending in the Greene County market, and analysis of available data suggests the transaction is unlikely to have an adverse competitive impact on small business lending in the market.<sup>27</sup> In addition, recent entry and expansionary activity suggests that the market is attractive to potential competitors. In 2016, one bank entered the market through an acquisition and a credit union entered the market de novo through the establishment of a branch. Further, a thrift established an additional branch in the market in April 2017.

Lawrence County, Tennessee, Banking Market. Using initial screening data, First Horizon is the fourth largest depository organization in the Lawrence County market, controlling approximately \$67.2 million in deposits, which represent approximately 11.3 percent of market deposits.<sup>28</sup> CBFC is the second largest depository organization in the Lawrence County market, controlling approximately \$87.8 million in deposits, which represent approximately 14.8 percent of market deposits. On consummation, First Horizon would become the second largest depository organization in the Lawrence County market, controlling approximately \$154.9 million in market

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<sup>26</sup> This analysis assumes that both branches are divested to an out-of-market firm. Any potential purchaser must be deemed competitively suitable by the Board.

<sup>27</sup> Analysis of the Greene County market using available data on small business lending results in an HHI reflective of a highly concentrated market, but the increase in the HHI following the merger would be minimal.

<sup>28</sup> The Lawrence County market is defined as Lawrence County, Tennessee.

deposits, which would represent approximately 26.1 percent of market deposits. The HHI in this market would increase by 334 points, from 1750 to 2084.

The competitive effects of the proposal in this market are mitigated by several factors that indicate that the increase in concentration in the Lawrence County market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market. A credit union exerts a competitive influence in the Lawrence County market. This institution offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the market. Taking into account the limited lending done by this credit union to small businesses relative to commercial banks' lending levels, the Board finds that these circumstances warrant including the deposits of this credit union at a 50-percent weight in estimating market influence. Taking into account this adjustment, First Horizon would control approximately 25.4 percent of market deposits upon consummation of the transaction, and the HHI effects of the transaction would exceed the DOJ Guidelines by a less significant amount, with an increase of 317 points to a level of 1988. Seven other insured depository institutions would remain in the market, including four with over 10 percent market share, one of which would have 30.5 percent market share. In addition, recent entry and expansionary activity suggests that the market is attractive to potential competitors. One bank entered the market de novo this year with the establishment of a loan production office.

Morristown Area, Tennessee, Banking Market. Based on initial screening data, First Horizon is the largest depository organization in the Morristown area market, controlling approximately \$228.8 million in deposits, which represent approximately 23.7 percent of market deposits.<sup>29</sup> CBFC is the sixth largest depository organization in the Morristown area market, controlling approximately \$61.9 million in deposits, which represent approximately 6.4 percent of market deposits. On consummation, First Horizon

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<sup>29</sup> The Morristown market is defined as Hamblen County, eastern Grainger County, and northern Jefferson County, all in Tennessee.

would remain the largest depository organization in the Morristown area market, controlling approximately \$290.8 million in market deposits, which would represent approximately 30.1 percent of market deposits. The HHI in this market would increase by 303 points, from 1540 to 1843.

Factors indicate that the increase in concentration in the Morristown area market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market. In particular, four credit unions exert a competitive influence in the Morristown area market. These institutions offer a wide range of consumer banking products, operate street-level branches, and have broad membership criteria that include almost all of the residents in the market. The Board finds that these circumstances warrant including the deposits of these credit unions at a 50-percent weight in estimating market influence. This weighting takes into account the limited lending done by these credit unions to small businesses relative to commercial banks' lending levels. Adjusting to reflect competition by these credit unions, the market concentration level in the Morristown area market as measured by the HHI would increase by 214 points, from a level of 1183 to 1397, the market share of First Horizon resulting from the transaction would be 25.3 percent, and numerous competitors would remain.

#### *Conclusion Regarding Competitive Effects*

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

Based on the facts of record, including the proposed divestiture commitments, 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 of the 11 banking markets in which First Horizon and CBFC compete directly or in any

other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

### Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.<sup>30</sup> In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

First Horizon and CBFC are both well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange, with a subsequent merger of the subsidiary depository institutions.<sup>31</sup> The asset

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<sup>30</sup> 12 U.S.C. § 1842(c)(2), (5), and (6).

<sup>31</sup> As part of the proposed transaction, each share of CBFC common stock would be converted into a right to receive cash or First Horizon common stock, or a combination of the two, based on a fixed exchange ratio. First Horizon has the financial resources to fund the transaction.

quality, earnings, and liquidity of both First Tennessee Bank and Capital Bank are consistent with approval, and First Horizon appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are considered consistent with approval.

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

First Horizon, CBFC, and their subsidiary depository institutions are each considered to be well managed. First Horizon has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. The directors and senior executive officers of First Horizon have substantial knowledge of and experience in the banking and financial services sectors, and First Horizon's risk-management program appears consistent with approval of this expansionary proposal.<sup>32</sup>

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<sup>32</sup> On February 8, 2017, the OCC entered into a consent order with First Tennessee Bank regarding unfair billing practices that the OCC identified related to an identity theft protection product that the bank offered through a third-party provider from 2000–2006. See First Tennessee Bank, N.A., OCC Consent Order for a Civil Money Penalty, No. 2017-018 and 2017-015 (February 8, 2017). The Board has consulted with the OCC regarding this matter. The OCC indicated in First Tennessee Bank's most recent CRA performance evaluation that to remediate, the bank strengthened its risk-management policies and practices, discontinued the product altogether, including for existing customers, and developed a plan to reimburse fees paid by all customers. Further, the OCC reviewed information pertaining to this matter and other matters noted in the bank's CRA performance evaluation in connection with its review of First Tennessee Bank's

The Board also has considered First Horizon's plans for implementing the proposal. First Horizon has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. First Horizon would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, First Horizon's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and First Horizon plans to integrate CBFC's existing management and personnel in a manner that augments First Horizon's management.<sup>33</sup>

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

#### Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.<sup>34</sup> In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential

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application to merge with Capital Bank, and did not identify any concerns regarding such matters that would impact the proposed transaction. Letter from Stephen A. Lybarger, Deputy Comptroller for District Licensing, OCC, to Jason Cabral, Esq., Sullivan & Cromwell (October 16, 2017) ("OCC Letter dated October 16, 2017").

<sup>33</sup> Following consummation of the proposed transaction, two CBFC directors will join the boards of directors of First Horizon and First Tennessee Bank.

<sup>34</sup> 12 U.S.C. § 1842(c)(2).

effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,<sup>35</sup> and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.<sup>36</sup>

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

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of First Tennessee Bank and Capital Bank; the fair lending and compliance records of both banks; the supervisory views of the OCC, the Federal Deposit Insurance Corporation ("FDIC"), and the Consumer Financial Protection Bureau ("CFPB"); confidential supervisory information; information provided by First Horizon; and the public comments received on the proposal.

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<sup>35</sup> 12 U.S.C. § 2901(b).

<sup>36</sup> 12 U.S.C. § 2903.

*Public Comments on the Proposal*

The Board received comments from over 20 commenters supporting the proposal. The commenters are charitable and community organizations, as well as businesses, that described benefits that First Horizon has provided to the communities that they serve. These commenters described various projects and partnerships between First Horizon and community groups that have benefited the community, including initiatives focused on enhancing economic mobility, financial services, and homeownership for LMI individuals. Commenters also highlighted First Horizon's support for organizations that provide financial education services to individuals and capital access to underserved businesses, as well as an organization that provides various support services for the African American community in the Winston-Salem, North Carolina, area.

One commenter objected to the proposal based on alleged weaknesses in the CRA and fair lending records of First Tennessee Bank and Capital Bank. The commenter alleged that, based on data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA")<sup>37</sup> and First Tennessee Bank's most recent CRA performance evaluation, First Tennessee Bank has displayed a poor record of lending to LMI individuals and communities, particularly in North Carolina. The commenter also alleged that, throughout its footprint, First Tennessee Bank had low levels of lending to African American and Hispanic borrowers in 2016 and that its loan application denial rates were higher for such applicants than for white applicants.<sup>38</sup> The commenter also

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<sup>37</sup> 12 U.S.C. § 2801 et seq.

<sup>38</sup> The commenter noted that in January 2016, First Tennessee Bank entered into a settlement agreement with a community organization that had submitted a fair housing complaint to the U.S. Department of Housing and Urban Development ("HUD") regarding allegations that the bank had low levels of lending to and high levels of denials of African American and Hispanic borrowers in certain geographic areas. First Horizon represents that the complainant submitted substantially similar allegations to the Federal Reserve and OCC in connection with First Horizon's applications to acquire TrustAtlantic Financial Corporation ("TrustAtlantic") and First Tennessee Bank's

alleged that First Tennessee Bank has failed to meet commitments it made in its current multi-year CRA plan, including goals related to lending and marketing to LMI borrowers and in LMI geographies, lending to small businesses, community development activities, and products and services tailored to LMI borrowers and in LMI geographies.<sup>39</sup> The commenter argued that the application should not be approved absent First Horizon's development of new plans and commitments to address alleged weaknesses in its fair lending and CRA programs and product and service offerings.<sup>40</sup> The commenter

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application to merge with Trust Atlantic Bank, and that First Tennessee Bank voluntarily settled the matter, while denying any violation of law, to avoid a lengthy and duplicative investigation by HUD. The Board approved the TrustAtlantic acquisition on September 17, 2015, and the OCC approved the related Bank Merger Act application on September 16, 2015. See First Horizon National Corporation, FRB Order No. 2015-24 (September 17, 2015); First Tennessee Bank, National Association, OCC CRA Decision No. 169 (September 16, 2015). In First Tennessee's CRA performance evaluation dated February 23, 2014, the OCC considered this settlement and evidence of other relevant violations of law, and the CRA rating was not lowered as a result of the evidence of discriminatory or other illegal credit practices. The OCC also reviewed information pertaining to this matter and other matters noted in the bank's CRA performance evaluation in connection with its review of First Tennessee Bank's application to merge with Capital Bank, and did not identify any concerns regarding such matters that would impact the proposed transaction. See OCC Letter dated October 16, 2017.

<sup>39</sup> The commenter also made suggestions regarding specific products and services that First Tennessee Bank should offer and recommended other changes to First Tennessee Bank's current product and service offerings. Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available on certain terms or at certain rates, the CRA neither requires an institution to provide any specific types of products or services nor prescribes the costs charged for them. See, e.g., PacWest Bancorp, 102 Federal Reserve Bulletin 82, 88 n. 24 (2015).

<sup>40</sup> The Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. See, e.g., United Bancshares, Inc., FRB Order No. 2017-10 at 12 n. 28 (April 6, 2017); Huntington Bancshares Inc., FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); CIT Group, Inc., FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); Citigroup Inc., 88 Federal Reserve Bulletin 485 (2002); Fifth Third Bancorp, 80 Federal Reserve Bulletin 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs

criticized First Tennessee Bank for its level of qualified community development investments in North Carolina and argued that First Tennessee Bank's current investments are not innovative.

The commenter also alleged that Capital Bank has an inconsistent record of lending to LMI borrowers and in LMI areas and that Capital Bank has a poor record of lending to African American and Hispanic borrowers.<sup>41</sup> The commenter was particularly critical of Capital Bank's lending performance in North Carolina. The commenter further alleged that Capital Bank's current community development investments are not innovative or creative.

*Businesses of the Involved Institutions and Response to the Adverse Comment*

First Horizon provides a diversified range of financial services, primarily through its principal subsidiary, First Tennessee Bank, which operates through a branch network in Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. Services provided by First Horizon include general banking services for consumers, businesses, financial institutions, and governments; fixed income sales and trading; underwriting of bank-eligible securities; loan sales; investment and financial advisory services; credit card products; equipment finance services; and retail insurance sales.

CBFC is the holding company of Capital Bank, which is a full-service bank offering a range of consumer and commercial products and services. Capital Bank offers a variety of commercial loan products; residential mortgage loans; investment, trust, and cash management products and services to small and medium-size businesses and

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that the applicant has in place to serve the credit needs of its CRA assessment areas ("AAs").

<sup>41</sup> The commenter focused on Capital Bank's lending performance to LMI individuals and areas in the Raleigh and Asheville, North Carolina, markets and the bank's lending performance to African American and Hispanic borrowers in North Carolina and Florida, based on HMDA data reported for 2016.

individuals; and a range of deposit products. It offers such products and services through branches in Florida, North Carolina, South Carolina, Tennessee, and Virginia.

In response to the commenter's allegations, First Horizon asserts that First Tennessee Bank's CRA performance and its record and efforts since its last CRA evaluation merit approval of the application. First Horizon represents that First Tennessee Bank has been and remains highly committed to meeting the needs of all customers, including LMI and minority individuals. In this regard, First Horizon notes that First Tennessee Bank offers a variety of loan and deposit products and other services designed to meet the needs of its community, and its products and services are equally available across its footprint. First Horizon asserts that First Tennessee Bank has launched certain products that are targeted toward LMI and minority individuals, including an affordable lending product that expands eligibility for financing homes in low-income communities. First Horizon asserts that First Tennessee Bank has hired five full-time community development managers in its major markets, who are tasked with building relationships and establishing partnerships with non-profits, affordable housing providers, and community development organizations. According to First Horizon, the community development managers will also work with community groups to promote new credit product opportunities for LMI and minority borrowers.

First Horizon further represents that First Tennessee Bank's commitment to the communities it serves has been enhanced in recent years with the development of a comprehensive multi-year CRA plan. First Horizon notes that this plan was required by and presented to the OCC, and that the OCC had no objection to implementation of the plan as written.<sup>42</sup> First Horizon represents that this plan reflects measurable CRA

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<sup>42</sup> In connection with its approval of First Tennessee Bank's application to merge with TrustAtlantic Bank in 2015, the OCC required First Tennessee Bank to develop a CRA Plan to address certain CRA performance weaknesses that the OCC identified at the time. See Letter from Stephen A. Lybarger, Deputy Comptroller for District Licensing, OCC, to Jackie Prester, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC (September 16, 2015); First Horizon National Corporation, FRB Order No. 2015-24, 23-24 (September 27, 2015). As discussed in more detail below, the Board has consulted

lending, investment, and service commitments for First Tennessee Bank across its CRA AAs. First Horizon denies the commenter's allegation that First Tennessee Bank is not in a position to meet its goals under this CRA plan and asserts that First Tennessee Bank has already met or exceeded the majority of its commitments under its CRA plan and that its remaining commitments are on track for completion by the end of 2017.

In response to the commenter's concerns regarding Capital Bank's CRA and fair lending record, First Horizon notes that Capital Bank received an overall CRA rating of "Satisfactory" in its most recent CRA evaluation and that Capital Bank's rating on the Lending Test was "High Satisfactory." First Horizon represents that Capital Bank establishes CRA lending, investment, and services benchmarks, as well as minority lending benchmarks, and that Capital Bank actively monitors its progress in attaining these benchmarks and reports these findings to senior management and its board of directors on a regular basis. First Horizon represents that Capital Bank launched a multifaceted outreach effort this year in order to attract minority applicants. This effort included targeted product mailings to prospective applicants and ongoing contact with applicable businesses and nonprofit organizations. Further, First Horizon asserts that Capital Bank has made efforts to recruit and retain a diverse team of mortgage loan originators with an established record of serving the credit needs of LMI and minority individuals throughout the bank's footprint.

First Horizon denies the commenter's allegations that Capital Bank has fair lending shortcomings. First Horizon represents that Capital Bank performs fair lending risk assessments annually and that Capital Bank's residential mortgage lending activity is thoroughly analyzed and reviewed using statistical and regression analysis, supplemented by additional data quality reviews. First Horizon acknowledges that a violation of Regulation B<sup>43</sup> was identified by the FDIC in Capital Bank's 2016 CRA evaluation. However, First Horizon notes that examiners stated that the violation was limited to a

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with the OCC regarding its views of First Tennessee Bank's CRA performance since its last CRA evaluation.

<sup>43</sup> 12 CFR 1002.

single loan product that has since been discontinued and that Capital Bank immediately implemented changes to policies, procedures, training programs, internal assessments, and other practices to prevent future discriminatory or other illegal credit practices.

*Records of Performance under the CRA*

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.<sup>44</sup> In this case, the Board considered the supervisory views of the OCC, FDIC, and CFPB.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.<sup>45</sup> An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data, in addition to

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<sup>44</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 81 Fed. Reg. 48506, 48548 (July 25, 2016).

<sup>45</sup> 12 U.S.C. § 2906.

small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's AAs; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;<sup>46</sup> (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.<sup>47</sup> Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

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<sup>46</sup> Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. See, e.g., 12 CFR 228.22(b)(3).

<sup>47</sup> Other information relevant to credit decisions could include credit history, debt-to-income ratio, and loan-to-value ratio. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

*CRA Performance of First Tennessee Bank*

First Tennessee Bank was assigned an overall “Satisfactory” rating by the OCC at its most recent CRA performance evaluation, as of April 7, 2014 (“First Tennessee Bank Evaluation”).<sup>48</sup> First Tennessee Bank received “High Satisfactory” ratings for the Lending Test, the Investment Test, and the Service Test. For the state of North Carolina, an area of particular concern to the commenter, First Tennessee Bank had a CRA rating of “Satisfactory.”

Examiners found that First Tennessee Bank originated a significant majority of its loans inside its AAs and that the bank’s lending activity was adequate. Examiners found that First Tennessee Bank’s geographic distribution of loans was adequate, noting that its excellent geographic distribution of small loans to businesses was offset by poor geographic distribution of home mortgage loans. Overall, examiners found that the distribution of loans by income level of the borrower was poor, as the bank’s distribution of home mortgage loans by income level of the borrower was found to be adequate, but distribution of loans to businesses with different revenue sizes was found to be very poor. Examiners explained that the bank’s community development lending had a significantly positive impact on the Lending Test in all rating areas and the bank’s community development loans supported affordable housing initiatives, activities that promoted economic development within the bank’s AAs, activities that revitalized or stabilized LMI census tracts, and operational activities of organizations that provide

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<sup>48</sup> The First Tennessee Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed HDMA and small business loans originated from January 1, 2010, through December 31, 2013. The evaluation period for community development loans, investments, and services was from January 11, 2010, through April 7, 2014. As of the evaluation date, the bank’s AAs included parts of Georgia, Mississippi, North Carolina, and Tennessee. Examiners conducted full-scope reviews in at least one AA in each state where the bank had a financial center. Examiners also conducted full-scope reviews in two Multistate Metropolitan Statistical Areas (“MMSAs”) where the bank operated branches in at least two states within the MMSA: the Memphis, Tennessee-Mississippi-Arkansas, MMSA and the Chattanooga, Tennessee-Georgia, MMSA.

services to LMI individuals and families. Examiners found that First Tennessee Bank's level of community development lending elevated its otherwise adequate lending performance to good.

In North Carolina, examiners noted that First Tennessee Bank's home mortgage and small business lending activity was adequate and that its community development loan performance and community development lending levels were good. The bank's overall geographic distribution and borrower income distribution were found to be very poor.<sup>49</sup> Examiners noted, however, that the bank had a very limited presence in North Carolina, with only two full-service branches, one of which was limited to wealth management and commercial banking. Examiners also explained that the banking industry in the state was very competitive and noted that there was a low level of owner-occupied units and a high level of rental units in the Winston-Salem MSA AA, the AA given the most weight in the evaluation of First Tennessee Bank's performance in North Carolina.

Examiners found that First Tennessee Bank had a good level of qualified community development investments that were highly responsive to identified community development needs. Examiners noted that the community needs supported by First Tennessee Bank's investments included affordable housing, economic development, and services targeting LMI individuals. In North Carolina, First Tennessee Bank was rated "High Satisfactory" for the Investment Test, and examiners found that First Tennessee Bank had a good level of community development investments that reflected a high level of responsiveness to identified community development needs. Examiners noted that the bank's investments helped various nonprofit organizations in North Carolina fund their community development programs and continue to provide services targeted to LMI individuals and families.

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<sup>49</sup> Examiners noted that they analyzed First Tennessee Bank's home mortgage and small business lending activity to identify any gaps in geographic distribution of loans and did not identify any unexplained conspicuous gaps.

Examiners found that First Tennessee Bank's branches were accessible to geographies and individuals of different income levels and that First Tennessee Bank provided an excellent level of community development services that were highly responsive to identified community development needs in the bank's AAs. Community development services noted by examiners in various AAs included services to organizations with a focus on serving LMI individuals, promoting economic development, and revitalizing and stabilizing AAs. In North Carolina, examiners found that First Tennessee Bank's overall level of community development service performance was excellent, but that First Tennessee Bank had a branch distribution that was accessible to limited portions of its AA.

Examiners noted that they considered evidence of discriminatory or other illegal credit practices in rating First Tennessee Bank's CRA performance and that the bank's CRA performance rating was not lowered as a result of their findings. In making this determination, examiners considered the nature, extent, and strength of the evidence of the practices; the extent to which the institution had policies and procedures in place to prevent the practices; the extent to which the institution had taken or had committed to take corrective action, including voluntary corrective action resulting from self-assessment; and other relevant information.<sup>50</sup>

*First Tennessee Bank's Activities Since the First Tennessee Bank Evaluation*

First Horizon asserts that, since the First Tennessee Bank Evaluation, First Tennessee Bank has been very active with lending, investment, and service activities that promote community development and the goals and objectives of the CRA. First Horizon represents that First Tennessee Bank has been working to increase its home mortgage lending to LMI tracts and individuals, as well as small businesses in LMI tracts. The bank's efforts include the development of an affordable mortgage product designed to serve the needs of LMI homebuyers; utilization of the LenderLive mortgage platform,

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<sup>50</sup> As discussed above, in making this determination, OCC examiners considered the facts underlying the 2016 settlement agreement between First Tennessee Bank and a complainant to HUD that was of concern to the adverse commenter.

which allows access to Fannie Mae and Freddie Mac affordable mortgage options; and continuing support to organizations that are funding small businesses.

In addition, First Horizon represents that First Tennessee Bank has made various community development loans that are responsive to community development and credit needs. According to First Horizon, such loans have supported affordable housing for LMI individuals; community services targeted to LMI individuals; economic development through the financing of small businesses that resulted in permanent job creation and/or retention; revitalization of LMI census tracts or other qualified geographies; and neighborhood stabilization projects to stimulate growth, stability, and investment in distressed areas. Further, First Horizon represents that First Tennessee Bank has continued to support its communities through a highly active volunteer program and has made a number of qualified grants targeted to community needs, including through a community development fund that it established to support agencies serving LMI communities and individuals. First Horizon also represents that First Tennessee Bank has established a partnership with a national nonprofit organization, the mission of which is to strengthen the economy by empowering individuals earning less than \$50,000 a year. First Horizon represents that, through this partnership, First Tennessee Bank has assisted thousands of individuals with financial education and counseling, including through the placement of certified financial counselors in the bank's branches to provide credit counseling, budgeting, and other financial empowerment training to individuals.

#### *CRA Performance of Capital Bank*

Capital Bank was assigned an overall CRA rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of February 22, 2016 ("Capital Bank Evaluation").<sup>51</sup> The bank received "High Satisfactory" ratings for the Lending Test and the Investment Test and a "Low Satisfactory" rating for the Service Test.

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<sup>51</sup> The Capital Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reported pursuant to HMDA and the CRA from

Examiners found that Capital Bank's lending levels reflected adequate responsiveness to credit needs within its AAs and that a high percentage of its loans were made within its AAs. Examiners further found that the geographic distribution of Capital Bank's loans reflected good penetration throughout its AAs. Examiners noted that Capital Bank's distribution of borrowers reflected adequate penetration among retail customers of different income levels and businesses of different sizes. Examiners found that the institution exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas of its AAs, low-income individuals, and very small businesses, consistent with safe and sound banking practices. Examiners stated that Capital Bank used flexible lending practices in order to serve the credit needs of its AAs and that the bank made a relatively high level of community development loans.

In North Carolina, examiners found that Capital Bank's lending levels reflected good responsiveness to the credit needs of the bank's AAs. Examiners noted that the geographic distribution of Capital Bank's lending reflected good penetration, and the borrower distribution reflected adequate penetration, throughout its North Carolina AAs. For the Raleigh Metropolitan Statistical Area AA,<sup>52</sup> examiners noted that the bank's level of lending reflected adequate responsiveness to the AA's credit needs, and the geographic distribution of its lending reflected adequate penetration, but that the borrower distribution reflected poor penetration. Examiners noted that the bank used flexible lending practices and made a relatively high level of community development

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January 1, 2011, through October 31, 2015. The evaluation period for community development investments and services was from July 16, 2010, through February 22, 2016. The Capital Bank Evaluation included a review of lending in all of the bank's AAs. Special weight was given to AAs in which the bank conducted the most lending and deposit activities, which were located primarily in North Carolina and Florida.

<sup>52</sup> The Raleigh Metropolitan Statistical Area AA consists of Johnston and Wake counties in North Carolina.

loans in this AA. For the Asheville Metropolitan Statistical Area AA,<sup>53</sup> examiners found that Capital Bank's level of lending reflected adequate responsiveness to the credit needs of the AA. Examiners found that the bank's geographic distribution of lending in the AA reflected good penetration, but that the borrower distribution reflected poor penetration. Examiners noted that the bank used flexible lending practices and made a relatively high level of community development loans in the AA.

Examiners found that Capital Bank made a significant level of qualified community development investments and grants, occasionally in a leadership position, particularly those that were not routinely provided by private investors. Examiners further noted that the bank exhibited good responsiveness to credit and community economic development needs, but that the institution rarely used innovative or complex investments to support community development initiatives.

Examiners found that the bank's delivery systems were reasonably accessible to essentially all portions of the bank's AAs. Examiners also found that, to the extent changes had been made, the institution's record of opening and closing branches generally had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals, and that services and business hours did not vary in a way that inconvenienced certain portions of the AAs, particularly LMI geographies and individuals. Examiners further noted that the bank provided an adequate level of community development services within its AAs.

*Additional Supervisory Views*

In its review of the proposal, the Board consulted with the OCC regarding First Tennessee Bank's CRA, consumer compliance, and fair lending records. The OCC reviewed the bank merger underlying this proposal, including the comments received by the Board. The Board has also considered the results of the most recent consumer compliance examination of First Tennessee Bank conducted by OCC examiners.

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<sup>53</sup> The Asheville Metropolitan Statistical Area AA consists of Buncombe and Madison counties in North Carolina.

The Board also consulted with the FDIC, the primary supervisor of Capital Bank, regarding Capital Bank's CRA, consumer compliance, and fair lending records. The Board considered the results of a recent consumer compliance examination of Capital Bank conducted by the FDIC, which included a review of the bank's compliance management system, particularly with respect to areas exhibiting the potential risk for consumer harm. Examiners also conducted transaction testing and conducted a fair lending review.

The Board also consulted with the CFPB regarding First Tennessee Bank's consumer compliance record.

The Board has taken the consultations with the OCC, FDIC, and CFPB, and the information discussed above, into account in evaluating the proposed transaction, including in considering whether First Horizon has the experience and resources to ensure that the organization effectively implements policies and programs that would allow the combined organization to serve effectively the credit needs of all the communities within the firm's AAs.

*Additional Convenience and Needs Considerations*

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. First Horizon represents that the combined organization, with its greater size, capabilities, and breadth of products, would be able to offer a number of services that are not currently available to customers of First Tennessee Bank and Capital Bank as separate entities. In addition, First Horizon asserts that current Capital Bank customers would gain access to a broader suite of products and services, including a "lifeline" checking account for consumers who otherwise would not be able to qualify for a checking account, prepaid cards, financial planning and investment management services, wealth advisory services, a full-service trust department, and more dynamic digital and mobile banking products. Moreover, First Horizon represents that customers of both banks would benefit from an expanded branch and ATM network. First Horizon also represents that, following consummation of the proposed transaction, First Tennessee Bank would increase its support for LMI

individuals and geographies across Capital Bank’s footprint by increasing its contributions to First Tennessee Bank’s community development fund. First Horizon also would expand its partnership with a national nonprofit organization that provides financial counseling in First Tennessee Bank branches.

*Conclusion on Convenience and Needs Considerations*

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions’ records of compliance with fair lending and other consumer protection laws, supervisory views of the OCC, FDIC and CFPB, confidential supervisory information, information provided by First Horizon, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is 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 to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater risk to the stability of the United States banking or financial system.”<sup>54</sup>

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border

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<sup>54</sup> Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601 (2010), codified at 12 U.S.C. § 1842(c)(7).

activities of the resulting firm.<sup>55</sup> These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the 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.<sup>56</sup>

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.<sup>57</sup>

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that is greater than \$10 billion in assets but a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominately engaged in retail and commercial banking activities.<sup>58</sup> The pro forma organization would have

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<sup>55</sup> Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

<sup>56</sup> For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order No. 2012-2 (February 14, 2012).

<sup>57</sup> See People's United Financial, Inc., FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

<sup>58</sup> As discussed supra, in the text on pages 19-20, First Horizon and CBFC offer a broad range of retail, and First Horizon offers a broad range of commercial, banking products and services. First Horizon has, and as a result of the proposed transaction would continue to have, a small market share in these products and services on a nationwide basis.

minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose significant risk to the financial system in the event of financial distress.

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

### Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. 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 First Horizon 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.

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 St. Louis, acting under delegated authority.

By order of the Board of Governors,<sup>59</sup> effective October 30, 2017.

*Ann E. Misback (signed)*

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Ann E. Misback  
Secretary of the Board

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<sup>59</sup> Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Appendix

<b>First Horizon/CBFC Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines</b>						
Data and rankings are as of June 30, 2016. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted for each market includes thrifts, where applicable.						
<b>Johnson City-Bristol, Tennessee-Virginia (“Johnson City-Bristol”)</b> – includes Carter, Hawkins, Sullivan, Unicoi, and Washington counties in Tennessee; and the independent city of Bristol, Scott County, and the Tyler and Wilson County subdivisions in Washington County, all in Virginia.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>First Horizon Pre-Consummation</i>	1	\$1.11B	18.67	1028	141	30
<i>CBFC</i>	10	\$224.0M	3.77			
<i>First Horizon Post-Consummation</i>	1	\$1.33B	22.44			
<b>Knoxville, Tennessee (“Knoxville”)</b> – includes Anderson, Blount, Knox, Loudon, Morgan, Roane, and Union counties; Grainger County excluding District 5 in eastern Grainger County; Jefferson County excluding Districts 3, 8, and 9 in northern and eastern Jefferson County; and Districts 6 and 9 in western Sevier County.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>First Horizon Pre-Consummation</i>	2	\$2.72B	17.51	1073	41	43
<i>CBFC</i>	16	\$182.6M	1.18			

<i>First Horizon Post-Consummation</i>	2	\$2.90B	18.69			
<b>Nashville, Tennessee (“Nashville”)</b> – includes Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Williamson, and Wilson counties.						
	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>First Horizon Pre-Consummation</i>	5	\$3.27B	6.67	943	15	63
<i>CBFC</i>	14	\$547.2M	1.12			
<i>First Horizon Post-Consummation</i>	5	\$3.82B	7.79			
<b>Raleigh, North Carolina (“Raleigh”)</b> – includes Franklin, Granville, Johnston, Wake, and Harnett counties excluding the Anderson Creek Barbeque, Johnsonville, and Stewarts Creek townships in Harnett County.						
	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>First Horizon Pre-Consummation</i>	14	\$399.3M	1.38	1281	11	32
<i>CBFC</i>	8	\$1.10B	3.82			
<i>First Horizon Post-Consummation</i>	7	\$1.50B	5.20			

<b>Sevierville, Tennessee (“Sevierville”)</b> – includes Cocke County, District 8 in eastern Jefferson County, and Sevier County excluding Districts 6 and 9 in western Sevier County.						
	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>First Horizon Pre-Consummation</i>	8	\$108.9M	4.49	1440	10	11
<i>CBFC</i>	12	\$28.0M	1.16			
<i>First Horizon Post-Consummation</i>	6	\$136.9M	5.65			
<b>Winston-Salem, North Carolina (“Winston-Salem”)</b> – includes Davie, Forsyth, Stokes, and Yadkin counties.						
	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>First Horizon Pre-Consummation</i>	12	\$102.2M	0.30	6772	1	17
<i>CBFC</i>	6	\$419.8M	1.23			
<i>First Horizon Post-Consummation</i>	6	\$521.9M	1.52			
<b>Charlotte, North Carolina-South Carolina (“Charlotte”)</b> – includes Anson, Cabarrus, Gaston, Lincoln, Mecklenburg, and Union counties in North Carolina; the city of Mooresville and the townships of Davidson and Coddle Creek in Iredell County, North Carolina; the townships of Atwell and China Grove in Rowan County, North Carolina; the King’s Mountain township in Cleveland County, North Carolina; and Lancaster and York Counties in South Carolina.						

	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>First Horizon Pre-Consummation</i>	41	< \$0.1M	0	5894	0	41
<i>CBFC</i>	12	\$561.8M	0.28			
<i>First Horizon Post-Consummation</i>	12	\$561.8M	0.28			
<p><b>Charleston, South Carolina (“Charleston”)</b> – includes Berkeley, Charleston, and Dorchester counties, plus the southeastern portion of Colleton County, located east of the South Edisto River on Edisto Island.</p>						
	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>First Horizon Pre-Consummation</i>	28	\$11.1M	0.09	1222	0	32
<i>CBFC</i>	21	\$40.8M	0.33			
<i>First Horizon Post-Consummation</i>	21	\$51.9M	0.42			