

FEDERAL RESERVE SYSTEM
National Bank Holdings Corporation
Greenwood Village, Colorado

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the
Establishment of Branches

National Bank Holdings Corporation (“NBH”), Greenwood Village, Colorado, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with Peoples, Inc. (“Peoples”), Lawrence, Kansas, and thereby indirectly acquire Peoples Bank, Lawrence, Kansas, and Peoples National Bank (“PNB”), Colorado Springs, Colorado.

In addition, NBH’s subsidiary state member bank, NBH Bank (together with NBH, “Applicants”), Greenwood Village, Colorado, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”) to merge with Peoples Bank and PNB, with NBH Bank as the surviving entity.³ NBH Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main offices and branches of Peoples Bank and PNB.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 Federal Register 37589 (August 11, 2017)).⁵ The time for submitting comments has expired, and the Board has considered the

¹ 12 U.S.C. § 1841 et seq.

² 12 U.S.C. § 1842.

³ 12 U.S.C. § 1828(c).

⁴ 12 U.S.C. § 321. In addition, NBH Bank has applied under section 9 of the FRA to establish branches at certain locations of Peoples Bank that currently only provide limited services. The locations of all of the branches to be established are listed in the Appendix.

⁵ 12 CFR 262.3(b).

proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation.

NBH, with consolidated assets of approximately \$4.7 billion, is the 212th largest insured depository organization in the United States. NBH controls approximately \$3.9 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁶ NBH controls NBH Bank, which operates in Colorado, Kansas, Missouri, and Texas. NBH is the 25th largest insured depository organization in Kansas, controlling deposits of approximately \$574.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁷ NBH is the 15th largest insured depository organization in Colorado, controlling deposits of approximately \$1.5 billion, which represent approximately 1.2 percent of the total deposits of insured depository institutions in that state.

Peoples, with consolidated assets of approximately \$924.3 million, is the 796th largest insured depository organization in the United States.⁸ Peoples controls approximately \$724.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Peoples controls Peoples Bank, which operates in Kansas and New Mexico, and PNB, which operates in Colorado. Peoples is the 69th largest insured depository

⁶ National asset data, market share, and ranking data are as of June 30, 2017, unless otherwise noted.

⁷ State deposit data are as of June 30, 2016. In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

⁸ The Winter Trust of 12/3/74 (“Winter Trust”), Lawrence, Kansas, is a registered bank holding company that controls Peoples. After consummation of the proposed transaction, the Winter Trust is expected to deregister as a bank holding company.

organization in Kansas, controlling deposits of approximately \$220.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. Peoples is the 42nd largest insured depository organization in Colorado, controlling deposits of approximately \$265.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, NBH would become the 192nd largest insured depository organization in the United States, with consolidated assets of approximately \$5.6 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. NBH would control consolidated deposits of approximately \$4.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In Kansas, NBH would become the 14th largest insured depository organization, controlling deposits of approximately \$794.5 million, which represent approximately 1.1 percent of the total deposits of insured depository institutions in that state. In Colorado, NBH would become the 14th largest insured depository organization, controlling deposits of approximately \$1.8 billion, which represent approximately 1.4 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.⁹

Section 44 of the Federal Deposit Insurance Act (“FDI Act”) generally provides that, if certain conditions are met, the Board may approve a merger transaction under the Bank Merger Act between insured banks with different home states without regard to whether the transaction is prohibited under state law.¹⁰ The Board may not approve an application

⁹ 12 U.S.C. § 1842(d)(1)(A).

¹⁰ 12 U.S.C. § 1831u(a)(1).

that would permit an out-of-state bank holding company or bank 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.¹¹ In addition, under section 3(d) of the BHC Act, 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, if 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 operations.¹²

For purposes of the BHC Act, the home state of NBH is Missouri, Peoples Bank is located in Kansas and New Mexico, and PNB is located in Colorado.¹³ For purposes of section 44 of the FDI Act, the home state of NBH Bank is Colorado, and the home states of Peoples Bank and PNB are Kansas and Colorado, respectively.¹⁴ NBH and NBH Bank are well capitalized and well managed under applicable law, and NBH Bank has a “Satisfactory” rating under the Community Reinvestment Act of 1977

¹¹ 12 U.S.C. §§ 1831u(a)(5) and 1842(d)(1)(B).

¹² 12 U.S.C. § 1842(d)(2)(A) & (B). Similar prohibitions apply to action by the Board on interstate bank merger applications under section 44 of the FDI Act. See 12 U.S.C. § 1831u(b)(2). For purposes of section 3(d) of the BHC Act, 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. 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).

¹³ 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 July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank’s home state is the state in which the bank is chartered.

¹⁴ For purposes of section 44 of the FDI Act, a state bank’s home state is the state in which the bank is chartered, and a national bank’s home state is the state in which the main office of the bank is located. 12 U.S.C. § 1831u(g)(4).

(“CRA”).¹⁵ Kansas has a five-year minimum age requirement and there are no minimum age requirements under the laws of Colorado or New Mexico that would apply to the proposal.¹⁶ Peoples Bank and PNB have each been in existence for more than 5 years.

On consummation of the proposed transaction, NBH would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Each of Kansas, Colorado, and New Mexico imposes a limit on the total amount of in-state deposits that a single banking organization may control. Specifically, Kansas imposes a 15 percent deposit limit, Colorado imposes a 25 percent deposit limit, and New Mexico imposes a 40 percent deposit limit.¹⁷ The combined organization would control approximately 1.1 percent of the total amount of deposits of insured depository institutions in Kansas, approximately 1.4 percent of the total amount of deposits of insured depository institutions in Colorado, and less than 1 percent of the total amount of deposits of insured depository institutions in New Mexico. The Board has considered all other requirements under section 3(d) of the BHC Act and section 44 of the FDI Act, including NBH 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 both statutes.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit 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.¹⁸ Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the

¹⁵ 12 U.S.C. § 2901 et seq.

¹⁶ See Kan. Stat. Ann. § 9-541.

¹⁷ See Kan. Stat. Ann. § 9-520; Colo. Rev. Stat. § 11-104-202(4); N.M. Stat. Ann. § 58-1C-5(B).

¹⁸ 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

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.¹⁹

NBH and Peoples have subsidiary depository institutions that compete directly in the Colorado Springs, Colorado, banking market (“Colorado Springs market”) and the Kansas City, Missouri, banking market (“Kansas City market”).²⁰ 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 the markets; the relative shares of total deposits of insured depository institutions in the markets (“market deposits”) that NBH would control;²¹ the concentration levels of market deposits and the increases 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”);²² and other characteristics of the markets.

¹⁹ 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

²⁰ The Colorado Springs market includes the Colorado Springs, Colorado, Ranally Metropolitan Area (“RMA”), and the non-RMA portions of El Paso and Teller counties, both of Colorado. The Kansas City market is defined as Cass, Clay, Jackson, Lafayette, Platte, and Ray counties, all of Missouri; the towns of Trimble and Holt in Clinton County, Missouri; the towns of Chilhowee, Holden, and Kingsville in Johnson County, Missouri; the towns of Adrian, Amsterdam, and Butler in Bates County, Missouri; Franklin, Johnson, Leavenworth, Miami, and Wyandotte counties, all of Kansas; and Linn County, Kansas (excluding the towns of Blue Mound and Prescott).

²¹ Local deposit and market share data are as of June 30, 2016, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989) and 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).

²² 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.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Colorado Springs and Kansas City markets. On consummation of the proposal, the Colorado Springs market would remain moderately concentrated and the Kansas City market would remain unconcentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in these markets would be small, and numerous competitors would remain in each banking market.²³

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 would not likely have a significantly adverse effect on competition in any relevant banking market.

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

²³ NBH operates the 36th largest depository institution in the Colorado Springs market, controlling approximately \$18.1 million in deposits, which represent approximately 0.2 percent of market deposits. Peoples operates the 8th largest depository institution in the same market, controlling deposits of approximately \$211.4 million, which represent approximately 2.8 percent of market deposits. On consummation of the proposed transaction, NBH would become the 8th largest depository organization in the market, controlling deposits of approximately \$229.4 million, which represent approximately 3 percent of market deposits. The HHI for the Colorado Springs market would increase by 2 points to 1068, and 38 competitors would remain in the market.

NBH operates the 6th largest depository institution in the Kansas City market, controlling approximately \$1.6 billion in deposits, which represent approximately 3.2 percent of market deposits. Peoples operates the 34th largest depository institution in the same market, controlling deposits of approximately \$174.5 million, which represent approximately 0.4 percent of market deposits. On consummation of the proposed transaction, NBH would remain the 6th largest depository organization in the market, controlling deposits of approximately \$1.7 billion, which represent approximately 3.5 percent of market deposits. The HHI for the Kansas City market would increase by 3 points to 847, and 115 competitors would remain in the market.

In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Colorado Springs or Kansas City markets, 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 and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.²⁴ In its evaluation of the 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. 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.

NBH and NBH Bank are both well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger, with subsequent mergers of Peoples Bank and PNB with and into NBH

²⁴ 12 U.S.C. §§ 1842(c)(2), (5) & (6), and 1828(c)(5) & (11).

Bank.²⁵ The asset quality, earnings, and liquidity of NBH Bank, Peoples Bank, and PNB are each consistent with approval, and NBH appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects 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 NBH, Peoples, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by NBH, the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

NBH and its subsidiary depository institution are each considered to be well managed. NBH has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. NBH's directors and senior executive officers have substantial knowledge of and experience in the banking and financial sectors, and NBH's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered NBH's plans for implementing the proposal. NBH has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. NBH would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, NBH's management has the experience and resources to operate the combined organization in a safe and sound manner, and NBH plans to integrate the

²⁵ To effect the transaction, each share of Peoples common stock would be converted into a right to receive cash and NBH common stock, based on an exchange ratio. NBH has the financial resources to effect the proposed transaction.

existing management and personnel of Peoples in a manner that augments NBH's management.²⁶

Based on all the facts of record, including NBH'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 future prospects of the organizations involved in the proposal, as well as the records of effectiveness of NBH and Peoples 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 and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁷ 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 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.²⁸ 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 the institutions' safe and sound operation,²⁹ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the

²⁶ Following consummation of the proposed transaction, certain officers and employees of Peoples Bank and PNB will join NBH Bank.

²⁷ 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

²⁸ 12 U.S.C. § 2901 *et seq.*

²⁹ 12 U.S.C. § 2901(b).

credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.³⁰

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

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of NBH Bank, Peoples Bank, and PNB; the compliance records of each bank; the supervisory views of the Federal Reserve Bank of Kansas City (“Reserve Bank”); confidential supervisory information; and information provided by NBH.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, 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.³¹ In this case, the Board considered the views of the Reserve Bank.

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.³² An

³⁰ 12 U.S.C. § 2903.

³¹ See Interagency Questions and Answers Regarding Community Reinvestment, 81 Federal Register 48506, 48548 (July 25, 2016).

³² 12 U.S.C. § 2906.

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 data reported under the Home Mortgage Disclosure Act ("HMDA"),³³ in addition to 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 assessment areas ("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;³⁴ (4) the institution's community development lending, including the number and amounts of

³³ 12 U.S.C. § 2801 et seq.

³⁴ 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).

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.

CRA Performance of NBH Bank

NBH Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of December 5, 2016 ("NBH Bank Evaluation").³⁵ The bank received an "Outstanding" rating for the Lending Test and "Low Satisfactory" ratings for the Investment Test and Service Test.³⁶

Examiners found that NBH Bank's overall lending activity reflected good responsiveness to the credit needs of its AAs. Examiners found that the bank originated a substantial majority of its HMDA, business, and farm loans within its AAs and that the geographic distribution of the bank's HMDA, business, and farm loans was good. In addition, examiners noted that the bank's loan distribution reflected good penetration among borrowers of different income levels and businesses and farms of different sizes. Examiners noted that NBH Bank was a leader in making loans that revitalized and stabilized LMI geographies, as well as loans for economic development.

Examiners determined that NBH Bank demonstrated an adequate responsiveness to the community development needs of its AAs through investments and service activity. Examiners found that the bank's community development investments primarily consisted of mortgage-backed securities comprised of loans to LMI borrowers

³⁵ The NBH Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA, business, and farm loans, as well as community development activities (loans, investments, and services), from January 1, 2011, through December 31, 2015.

³⁶ The NBH Bank Evaluation included full-scope evaluations in the Kansas City, Combined Statistical Area; Denver, Colorado Metropolitan Statistical Area ("MSA"); Rural Colorado AA; Northwest Rural Missouri AA; and the Dallas, Texas Metropolitan Division. Limited scope evaluations were performed in the Colorado Springs, Colorado MSA; Fort Collins, Colorado MSA; Greeley, Colorado MSA; Pueblo, Colorado MSA; Grand Junction, Colorado MSA; North Central Rural Missouri AA; Northeast Rural Missouri AA; and Austin, Texas MSA.

or secured by a residential mortgage within an LMI census tract. In addition, examiners found that the bank's products, services, and business hours did not vary in a way that inconvenienced customers in its AAs, particularly those in LMI geographies and individuals.

CRA Performance of Peoples Bank

Peoples Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of August 6, 2012 ("Peoples Bank Evaluation").³⁷ The bank received "Satisfactory" ratings for each of the Lending Test and the Community Development Test.³⁸

Examiners found that Peoples Bank's average net loan-to-deposit ratio, which is a measure of the overall level of lending, was more than reasonable given the bank's size and financial condition and the credit needs of the bank's AAs. Examiners also found that a majority of the bank's home purchase, home improvement, and business loans were originated within the bank's AAs and that the geographic and borrower distribution of loans reflected reasonable penetration throughout the bank's AAs.

Examiners noted that Peoples Bank's community development performance, which included loans, donations, and services, demonstrated adequate responsiveness to community development needs throughout its AAs. The bank was found to have performed service activities for various organizations, particularly those providing community services targeted to LMI individuals or families.

³⁷ The Peoples Bank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. Examiners reviewed HMDA loans from 2010 and 2011 and business loans from a six-month period that ended June 12, 2012. Examiners also reviewed community development activities (loans, investments, and services), from June 21, 2010, through August 6, 2012.

³⁸ The Peoples Bank Evaluation included full-scope evaluations in the Kansas City, Missouri-Kansas MSA, and the Albuquerque, New Mexico MSA. Limited scope evaluations were performed in the Lawrence, Kansas MSA and Non-Metropolitan, Taos County, New Mexico Non-MSA.

CRA Performance of PNB

PNB was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of June 6, 2011 (“PNB Evaluation”).³⁹ Examiners found that PNB’s loan-to-deposit ratio was excellent, given area competition and the credit needs of the community. Examiners also found that the majority of the bank’s loans by number and dollar amount were originated within its AA and its overall lending to borrowers of different incomes and to small businesses was reasonable. Examiners determined that the bank’s lending to small businesses was excellent and noted that the bank’s distribution of loans to small businesses exceeded the demographic comparator.

Examiners found that the geographic distribution of PNB’s residential real estate loans reflected reasonable dispersion throughout the geographies for different income levels. Examiners also found that the geographic distribution of PNB’s business loans within the bank’s AA was excellent.

Additional Convenience and Needs Considerations

The Board has entered into a Consent Order with Peoples Bank with respect to deceptive practices in violation of section 5 of the Federal Trade Commission Act,⁴⁰ which were centered in Peoples Bank’s national mortgage business line. This business line, which is separate and apart from the Bank’s community banking operations, is being terminated and is not being assumed by NBH as part of this proposal. Pursuant to the Consent Order, Peoples Bank has agreed to pay restitution to affected customers and to set aside at least \$2.8 million for this purpose. Because NBH is not a party to the Consent Order, this order is conditioned on NBH’s commitment to cause

³⁹ The PNB Evaluation was conducted using Small Bank CRA Examination Procedures. Examiners reviewed commercial real estate loans from January 2006 through May 2011, and HMDA loans from January 1, 2010, through March 31, 2011. The PNB Evaluation included a full-scope review of the bank’s AA, the El Paso County, Colorado MSA.

⁴⁰ 15 U.S.C. § 45.

NBH Bank to comply with Peoples Bank's restitution and related Consent Order obligations.

The Board also considered other potential effects of the proposal on the convenience and needs of the communities to be served. NBH represents that it does not have any plans to discontinue any product or service currently offered by Peoples Bank or PNB. NBH represents that, following the proposed transaction, its customers would gain access to products and services not currently offered by NBH Bank, including wealth and investment services through a third-party broker-dealer relationship and health savings accounts and payroll services through another third-party relationship. In addition, NBH represents that the proposed transaction would provide expanded product capabilities to customers of Peoples Bank and PNB, including access to NBH Bank's credit card offerings, a merchant-funded debit card cash back program, and various online banking features, such as wire transfers, person-to-person payments, and personal financial management tools. In addition, NBH represents that customers of NBH and Peoples would benefit from a larger branch and ATM network.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with consumer protection laws, confidential supervisory information, information provided by NBH, 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 and the Bank Merger Act to

require the Board to consider a proposal’s “risk to the stability of the United States banking or financial system.”⁴¹

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 activities of the resulting firm.⁴² 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.⁴³

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

⁴¹ Dodd-Frank Act §§ 604(d) & (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602 (2010), codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

⁴² Many of the metrics considered by the Board measure an institution’s activities relative to the United States financial system.

⁴³ For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order No. 2012-2 (February 14, 2012).

result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.⁴⁴

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 has less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominantly engaged in a variety of consumer and commercial banking activities.⁴⁵ The pro forma organization would have 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 a 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.

⁴⁴ See Peoples 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.

⁴⁵ NBH offers a variety of banking products and services, including retail and commercial banking; consumer, commercial, and mortgage lending; and consumer finance loans. Peoples also offers a variety of banking products and services, including commercial, mortgage, and consumer loans. In each of the activities in which it engages, NBH has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

Establishment of Branches

NBH Bank has applied under section 9 of the FRA to establish branches at the current locations of Peoples Bank and PNB.⁴⁶ The Board has assessed the factors it is required to consider when reviewing an application under that section.⁴⁷ Specifically, the Board has considered NBH Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Applicants with all of 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 applications. For purposes of this action, the conditions and commitments are deemed to

⁴⁶ See 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. A national bank may establish and operate a new branch within a state in which it is situated, if such establishment and operation is authorized under applicable state law. 12 U.S.C. § 36(c). A national bank also may retain any branch following a merger that under state law may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. See 12 U.S.C. §§ 36(b)(2) & (c). In addition, under section 44 of the FDI Act, a bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. 12 U.S.C. § 1831u(d). Upon consummation, NBH Bank's branches would be permissible under applicable state law. See Kan. Stat. Ann. § 9-1111(b); Colo. Rev. Stat. §§ 11-105-602 and 603; N.M. Stat. Ann. § 58-5-2.

⁴⁷ 12 U.S.C. § 322; 12 CFR 208.6.

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 by the Reserve Bank, acting under delegated authority.

By order of the Board of Governors,⁴⁸ effective November 28, 2017.

Ann E. Misback (signed)

Ann E. Misback
Secretary of the Board

⁴⁸ Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Appendix

Branches to Be Established by NBH Bank

1. 745 New Hampshire Street, Lawrence, Kansas 66044
2. 4831 West 6th Street, Lawrence, Kansas 66049
3. 1506 South Main Street, Ottawa, Kansas 66067
4. 434 South Main Street, Ottawa, Kansas 66067
5. 7579 West 151st Street, Overland Park, Kansas 66223
6. 3045 Iowa Street, Lawrence, Kansas 66046
7. 212 South Broadway Street, Louisburg, Kansas 66053
8. 13180 Metcalf Avenue, Overland Park, Kansas 66213
9. 5 Supermarket Road, Questa, New Mexico 87556
10. 121 East Main Street, Red River, New Mexico 87558
11. 710 Paseo Del Pueblo Sur, Suite A, Taos, New Mexico 87571
12. 219 Paseo Del Pueblo Norte, Taos, New Mexico 87571
13. 2155 Louisiana Boulevard Northeast, Suite 1000, Albuquerque, New Mexico, 87110
14. 1356 Paseo Del Pueblo Sur, Taos, New Mexico 87571
15. 19 North Tejon, Suite 100, Colorado Springs, Colorado 80903
16. 5175 North Academy Boulevard, Colorado Springs, Colorado 80918
17. 13725 Struthers Road, Suite 200, Colorado Springs, Colorado 80921
18. 400 Harrison Avenue, Leadville, Colorado 80461
19. 1899 Woodmoor Drive, Monument, Colorado 80132
20. 651 Scott Avenue, Woodland Park, Colorado 80863