

FEDERAL RESERVE SYSTEM

BB&T Corporation
Winston-Salem, North Carolina

Order Approving the Acquisition of a Savings Association

BB&T Corporation (“BB&T”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board’s Regulation Y¹ to acquire all the voting shares of BankAtlantic, a subsidiary federal savings association of BankAtlantic Bancorp, Inc. (“BA Bancorp”), a savings and loan holding company, both of Fort Lauderdale, Florida.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the Federal Register (77 Federal Register 1072 (January 9, 2012)) and the time for filing comments has expired. The Board has considered all comments received on the proposal.³

¹ 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.

² Immediately following the proposed acquisition, BankAtlantic would be merged into BB&T’s lead subsidiary bank, Branch Banking and Trust Company (“Branch Bank”) (total assets of \$168.9 billion), also of Winston-Salem. That merger proposal is subject to approval by the Federal Deposit Insurance Corporation (“FDIC”) under the Bank Merger Act and by the North Carolina Banking Commission (“State”) under state law. The State approved the merger on March 14, 2012, and the FDIC approved the merger on July 16, 2012, conditioned on the Federal Reserve’s approval of this notice.

³ During the application process, BB&T restructured its original proposal, which would have resulted in BA Bancorp retaining its obligation to pay its Trust Preferred Securities (“TPS”) holders. TPS holders objected to this proposal, contending that (a) the manner in which the proposal was structured was illegal; (b) the proposed transaction violated BA Bancorp’s obligations to its creditors and exposed BA Bancorp, BankAtlantic, and BB&T to litigation; (c) the proposed transaction would be inconsistent with sound prudential regulation; and (d) the proposed compensation structure would permit insiders to exploit the banking system and evade prudential regulation. The first three of these comments uniquely related to the original proposal and are no longer relevant in light of

BB&T, with total consolidated assets of approximately \$174.8 billion, is the 18th largest depository organization in the United States, as measured by asset size.⁴ BB&T is the eighth largest depository organization in the United States, as measured by deposits, and controls deposits of approximately \$142.4 billion, which represent approximately 1.58 percent of the total amount of deposits of insured depository institutions in the United States. BB&T controls two insured depository institutions, Branch Bank and BB&T Financial, F.S.B. (“FSB”), Columbus, Georgia.⁵ Branch Bank operates branches in Alabama, Florida, Georgia, Indiana, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Texas, Virginia, West Virginia, and the District of Columbia. In Florida, Branch Bank is the fifth largest depository institution, controlling deposits of approximately \$12.6 billion.⁶

BA Bancorp, with total consolidated assets of \$3.8 billion, controls BankAtlantic, which operates only in Florida.⁷ BankAtlantic is the 17th largest depository institution in Florida, controlling deposits of approximately \$3.5 billion.

On consummation of the proposal, BB&T would become the 17th largest depository organization in the United States, with total consolidated assets of approximately \$178.6 billion. BB&T would control deposits of approximately \$145.9 billion, which represent 1.63 percent of the total amount of deposits of insured depository institutions in the United States.

the restructured proposal. The comment on compensation as well as objections (b) and (c) were also formally withdrawn after the restructured proposal was submitted.

⁴ National deposit, asset, and ranking data are as of December 31, 2011, and include mergers through that date. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

⁵ Branch Bank is BB&T’s largest subsidiary depository institution, as measured by both assets and deposits. FSB, a federal savings bank, offers, primarily through the Internet, credit card and merchant services, consumer and commercial outdoor equipment loans, marine and recreational vehicle loans, retail auto loans, and prepaid card products.

⁶ State deposit, asset, and ranking data are as of June 30, 2011.

⁷ BA Bancorp, in turn, is controlled by BFC Financial Corporation, Inc., a publicly traded savings and loan holding company.

Interstate and Deposit Cap Analyses

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1601 (2010) (“Dodd-Frank Act”), amended section 4 of the BHC Act to prohibit the Board from approving an application by a bank holding company to acquire an insured depository institution, including a savings association, if the home state of the insured depository institution is a state other than the home state of the bank holding company, and the applicant controls or would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States (“nationwide deposit cap”).⁸ The nationwide deposit cap was intended to help guard against undue concentrations of economic power.⁹ For purposes of the BHC Act, the home state of BB&T is North Carolina, and the home state of BankAtlantic is Florida.¹⁰

Based on the latest available data reported by all insured depository institutions in the United States, the total amount of deposits of insured depository institutions is \$8.9 trillion.¹¹ On consummation of the proposed transaction,

⁸ Dodd-Frank Act § 623(b), codified at 12 U.S.C. § 1843(i)(8). For a detailed discussion of the nationwide deposit cap, see Bank of America Corporation/LaSalle, (order dated Sept. 14, 2007), 93 Federal Reserve Bulletin C109, C109-C110 (3rd Quar. 2007); Bank of America Corporation/Fleet, (order dated Mar. 8, 2004), 90 Federal Reserve Bulletin 217, 219-220 (Spring 2004) (“Fleet Order”).

⁹ See Fleet Order at 219.

¹⁰ 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. 12 U.S.C. § 1841(o)(4)(C). For a federal savings association, the home state is the state in which the home office of the savings association is located. 12 U.S.C. § 1841(o)(4)(E).

¹¹ Deposit data are calculated based on reports filed by insured depository institutions and are as of December 31, 2011. Each bank insured by the FDIC in the United States must report data regarding its total deposits in accordance with the definition of “deposit” under the Federal Deposit Insurance Act, 12 U.S.C. § 1813(l), on the institution’s Consolidated Report of Condition and Income. Each insured savings association similarly must report its total deposits on the institution’s Thrift Financial Report. Deposit data for FDIC-insured U.S. branches of foreign banks and federal branches of foreign banks are obtained from the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks. These data are reported quarterly to the FDIC and are publicly available.

BB&T would control approximately 1.63 percent of the total amount of deposits in insured depository institutions in the United States. Accordingly, in light of all the facts of record, the Board is not prohibited from approving the proposal under section 4(j) of the BHC Act. Factors Governing Board Review of the Transaction

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.¹² The Board requires that savings associations acquired by bank holding companies or financial holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4(c)(8) of the Act.¹³ BB&T has committed that all the activities of BankAtlantic will conform to those activities that are permissible under section 4 of the BHC Act and Regulation Y within the act's two-year conformance period after the acquisition.

Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of BankAtlantic "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."¹⁴ As part of its evaluation of those factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, the risk to the stability of the United States banking or financial system, and the public benefits of the

¹² 12 CFR 225.28(b)(4)(ii).

¹³ A savings association operated by a bank holding company may engage only in activities that are permissible for bank holding companies under section 4(c)(8) of the BHC Act. 12 CFR 225.28(b)(4)(ii).

¹⁴ 12 U.S.C. § 1843(j)(2)(A). Section 604(e) of the Dodd-Frank Act added "risk to the stability of the United States banking or financial system" to the list of possible adverse effects.

proposal.¹⁵ In acting on a notice to acquire a savings association, the Board also reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).¹⁶

Competitive Considerations

As part of the Board’s consideration of the factors under section 4 of the BHC Act, the Board has considered the competitive effects of BB&T’s acquisition of BankAtlantic in light of all the facts of record. BB&T and BankAtlantic compete directly in three banking markets, all in Florida: Fort Pierce Metropolitan Statistical Area (“Fort Pierce”), Miami-Fort Lauderdale-Pompano Metropolitan Statistical Area (“Miami-Fort Lauderdale-Pompano”), and West Palm Beach Metropolitan Statistical Area (“West Palm Beach”).¹⁷ The Board has reviewed the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets (“market deposits”) controlled by BB&T and BankAtlantic, the concentration levels of market deposits as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹⁸ and other characteristics of the markets.

¹⁵ See 12 CFR 225.26; see, e.g., Bank of America Corporation/Countrywide, (order dated June 5, 2008), 94 Federal Reserve Bulletin C81 (2nd Quar. 2008); Wachovia Corporation, (order dated Sept. 29, 2006), 92 Federal Reserve Bulletin C138 (3rd Quar. 2006); BancOne Corporation, (order dated May 14, 1997), 83 Federal Reserve Bulletin 602 (1997).

¹⁶ 12 U.S.C. § 2901 et seq. In assessing the merger proposal of BankAtlantic into Branch Bank under the Bank Merger Act, the FDIC is required to take into consideration the same factors that are reviewed by the Board under the BHC Act, including the effects of the acquisition on financial stability and on the convenience and needs of the community to be served. 12 U.S.C. § 1828(c)(5).

¹⁷ Fort Pierce is defined as St. Lucie County and Martin County (excluding the towns of Indiantown and Hobe Sound). Miami-Fort Lauderdale-Pompano is defined as Broward and Miami-Dade Counties. West Palm Beach is defined as Palm Beach County east of Loxahatchee and the towns of Indiantown and Hobe Sound in Martin County.

¹⁸ Under the DOJ 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

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in each of the three banking markets. On consummation of the proposal, one market would remain unconcentrated, and two markets would remain moderately concentrated, all as measured by the HHI. The changes in the HHI's measure of concentration would be minimal, and numerous competitors would remain in all three banking markets.¹⁹

The DOJ has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the transaction would not be likely to have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposed transaction would not have a significantly adverse effect on competition or

of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally will 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. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities. Although the DOJ and the Federal Trade Commission recently issued revised Horizontal Merger Guidelines, the DOJ has confirmed that its guidelines for bank mergers or acquisitions, which were issued in 1995, were not changed. Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

¹⁹ The HHI would decrease in each market as follows: 18 points to 1013 in Fort Pierce, 3 points to 703 in Miami-Fort Lauderdale-Pompano, and 11 points to 1009 in West Palm Beach. Those decreases result from a pre-merger weighting of BankAtlantic's market deposits at 50 percent and a post-merger weighting at 100 percent. See Norwest Corporation, 78 Federal Reserve Bulletin 452 (1992); First Banks, Inc., 76 Federal Reserve Bulletin 669 (1990) (deposits of thrifts are included in pre-merger market share calculations on a 50 percent weighted basis but included at 100 percent in the calculation of pro forma market share because the deposits would be acquired by a commercial banking organization). The resulting pro forma shares of BB&T's market deposits would be as follows: 4.9 percent in Fort Pierce, 4.0 percent in Miami-Fort Lauderdale-Pompano, and 4.5 percent in West Palm Beach.

on the concentration of resources in any relevant banking market and is consistent with approval.

Financial and Managerial Resources

The Board has considered the financial and managerial resources of BB&T, its subsidiaries, and BankAtlantic and the effect of the transaction on those resources, in light of confidential reports of examination, other supervisory information from the primary federal supervisor of the organizations involved in the proposal, publicly reported and other financial information, information provided by BB&T and BankAtlantic, and other relevant information. The Board also consulted with the FDIC, the primary federal supervisor of BB&T's lead subsidiary depository institution, Branch Bank, and the Office of the Comptroller of the Currency ("OCC"), the primary federal supervisor of BankAtlantic and FSB.

In evaluating financial resources in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary insured depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and 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 the proposed integration of the operations of the institutions.

The Board has considered the financial factors of the proposal. BB&T's regulatory capital ratios are well above the minimums required of well-capitalized bank holding companies and would remain so on consummation of the proposal. BB&T's subsidiary depository institutions are well capitalized and would remain so after consummation. BB&T would acquire approximately \$2.1 billion in loans and assume

approximately \$3.3 billion in deposits from BankAtlantic, as well as approximately \$285 million in outstanding TPS. The transaction would be funded with available cash on hand, and there are no plans to raise additional capital or issue any debt obligations in connection with the transaction. Asset quality and earnings prospects also are 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 BB&T, its subsidiary insured depository institutions, and BankAtlantic, including assessments of their management expertise, internal controls, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant financial supervisory agencies with the organizations and the organizations' records of compliance with applicable banking laws and with anti-money-laundering laws. The Board has also considered the comments it received on the proposal.

BB&T and its subsidiary depository institutions are considered to be well managed. BB&T would implement its risk-management policies, procedures, and controls at the combined organization, which are regarded as satisfactory. In addition, BB&T's management has the experience and resources to ensure the successful integration of the two organizations and the safe and sound operation of the combined organization.²⁰

Based on all the facts of record, including a review of the comments received, the Board has concluded that considerations relating to the financial and managerial resources of the organizations involved in the proposal are consistent with approval under section 4 of the BHC Act.

²⁰ Two commenters referenced an SEC lawsuit alleging that the chairman of BA Bancorp had engaged in a pattern of misleading BA Bancorp's investors through selective and untimely disclosures with respect to problem loans. The individuals named in the lawsuit will not be associated with BB&T or BankAtlantic after consummation of the proposed transaction.

Convenience and Needs Considerations

As noted, the Board reviews the records of performance under the CRA of the relevant insured depository institutions when acting on a notice to acquire any insured depository institution, including a savings association.²¹ 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,²² and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²³

The Board has considered all the facts of record, including reports of examination of the CRA performance records of BB&T's subsidiary insured depository institutions and of BankAtlantic, data reported by BB&T and BankAtlantic under the CRA and the Home Mortgage Disclosure Act ("HMDA"),²⁴ other information provided by BB&T, and confidential supervisory information. The Board has also considered the public comments received on the proposal regarding the depository institutions' CRA, fair lending, and HMDA performance.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the proposal in light of the examinations by the appropriate federal supervisors of the CRA performance records of the insured depository institutions involved in the proposal. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications

²¹ 12 U.S.C. § 2901 et seq.

²² 12 U.S.C. § 2901(b).

²³ 12 U.S.C. § 2903.

²⁴ 12 U.S.C. § 2801 et seq.

process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.²⁵

Branch Bank received an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of January 22, 2008. The Public Evaluation ("PE") for that examination gave Branch Bank ratings of "High Satisfactory" for the Lending Test and "Outstanding" for the Investment and Service Tests. Substantive violations of the Equal Credit Opportunity Act and the Fair Housing Act were noted and resulted in Branch Bank's overall CRA rating being lowered from "Outstanding" to "Satisfactory." The Board consulted with the FDIC on BB&T's fair lending record regarding the progress made by Branch Bank's management to address these matters and to correct its fair lending policies and procedures and fee structure to help ensure compliance with the fair lending laws.²⁶

FSB is headquartered in Columbus, Georgia, with operations concentrated in the credit card and merchant services division in Wilson, North Carolina.²⁷ Rather than operate traditional brick and mortar branches, the bank operates on a branchless platform, distributing its products through the Internet, direct mail, and telemarketing calls. FSB's business model includes various business lines and operating subsidiaries that offer a variety of products and services.²⁸ FSB received a "Satisfactory" rating at its most

²⁵ See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 11,642 at 11,665 (2010).

²⁶ One commenter requested that the BB&T acquisition be conditionally approved, asserting that a "Satisfactory" rating for a bank as large as BB&T was unacceptable and that the largest retail banks should all have "Outstanding" ratings for CRA performance. This commenter also criticized Branch Bank for its failure to maintain a consistent "Outstanding" CRA rating. The commenter cited the fair lending violations that were reported in the PE for BB&T's 2008 examination, noted above, and BankAtlantic's CRA performance as reasons why a conditional approval would be appropriate.

²⁷ The bank was chartered on April 1, 2008, when BB&T Bankcards Corporation converted from a special-purpose state bank to an FDIC-insured federal savings bank.

²⁸ At the time of the CRA evaluation, the business lines and operating subsidiaries that contributed to the thrift's CRA performance were BB&T Bankcards ("Bankcards"), Sheffield Financial ("Sheffield"), and Liberty Mortgage Corporation ("LMC"). Bankcards

recent CRA examination conducted by the Office of Thrift Supervision (“OTS), as of January 3, 2011. The bank was rated “Satisfactory” overall, with ratings of “Low Satisfactory” for the Lending Test, “Outstanding” for the Investment Test, and “High Satisfactory” for the Service Test.²⁹

BankAtlantic received a “Needs to Improve” CRA rating at its most recent CRA examination conducted by the OTS, as of May 24, 2010. The OTS examination noted violations of the Federal Trade Commission Act discovered during the thrift’s consumer compliance examination that involved an automated overdraft protection program.

BB&T reported that it has reviewed BankAtlantic’s policies and procedures, monitoring reports, training delivery and frequency, and compliance reports. BB&T has directed its compliance staff to work with both Branch Bank and BankAtlantic employees to ensure that BankAtlantic’s overdraft practices comply with the FDIC’s guidance on overdraft protection programs.³⁰ BB&T has committed that after consummation of the proposed merger, it will address any deficiencies in BankAtlantic’s CRA performance by implementing BB&T’s existing policies and procedures at the combined organization. Those policies and procedures are considered satisfactory. To that end, BB&T plans to build on BankAtlantic’s existing CRA efforts and programs, including identifying the housing, small business, and community development needs of each assessment area;

issued credit card products to consumer, corporate, and small business clients and was the FSB’s largest business line. Sheffield, a nationwide specialty installment lender, financed consumer and small business purchases of small-ticket outdoor equipment. LMC offered a variety of home purchase and refinance products, including FHA and VA loans, that were originated nationwide through a network of mortgage originators. Residential mortgage loans accounted for less than 1 percent of FSB’s loan portfolio. Due to a change in FSB’s business model, LMC ceased operations on July 31, 2010.

²⁹ These ratings represented FSB’s first CRA examination, and the review period was April 1, 2008, the date the bank commenced operations, through December 31, 2009.

³⁰ Branch Bank, which will survive the merger with BankAtlantic, is a state nonmember bank supervised by the FDIC.

reviewing community action plans; and interviewing local community-based organization leaders to discuss the needs of the communities.

B. HMDA Analysis

In its evaluation, the Board has considered the records of BB&T and BankAtlantic in complying with fair lending and other consumer protection laws. The Board has reviewed HMDA data reported by Branch Bank and BankAtlantic. A commenter opposed the proposal by alleging, based on 2010 HMDA data reported by Branch Bank and BankAtlantic, that both institutions engaged in discriminatory treatment of minority individuals in their home mortgage lending. The commenter also alleged that Branch Bank and BankAtlantic denied the home mortgage loan applications of minority borrowers more frequently than those of nonminority applicants in certain metropolitan statistical areas (“MSAs”).³¹

The HMDA data indicate that in 2010 Branch Bank somewhat lagged the aggregate in the percentage of applications received from African Americans and Hispanics and from minority census tracts but was consistent with the aggregate with respect to the percentage of applications it received from LMI census tracts and LMI individuals. The percentage of Branch Bank’s loan originations was largely consistent with the aggregate with respect to its loans in LMI census tracts and to LMI individuals, but the bank lagged the aggregate with respect to its loans to African Americans and Hispanics and in minority census tracts.

In the Port St. Lucie MSA, an area cited by the commenter, Branch Bank received and originated very few applications from African Americans and Hispanics in 2010. The Board notes that Branch Bank currently has four branches in the Port St. Lucie

³¹ The Board reviewed 2008, 2009, 2010, and preliminary 2011 HMDA data for Branch Bank in its combined assessment areas; in Florida, Georgia, North Carolina, and Virginia (the states with the majority of the bank’s branching network); and in all areas identified by the commenter. The Board also reviewed BankAtlantic’s 2008, 2009, 2010, and preliminary 2011 HMDA data in the MSAs cited in the comments, as well as BankAtlantic’s HMDA lending throughout its combined assessment areas.

MSA and entered the market only recently, in August 2009, when BB&T acquired Colonial Bank, Montgomery, Alabama, in a failed-bank transaction with the FDIC.

In 2011, HMDA loan applications from African Americans and Hispanics in Branch Bank's combined assessment areas increased slightly from 2010. The Board notes that, although the percentage of Branch Bank's originations to African Americans in 2011 remained the same as in 2010, the percentage of its loan originations to Hispanics increased slightly. In addition, Branch Bank's HMDA loan originations in minority census tracts, in LMI census tracts, and to LMI individuals remained steady or increased in 2011.

The Board's review of Branch Bank's denial disparity rates to African American or Hispanic applicants relative to white applicants (denial disparity ratios or "DDR's") in its combined assessment areas, the State of North Carolina (the bank's home state), the Winston-Salem MSA (the bank's headquarters), the State of Florida, and the MSAs identified by the commenter, indicates that the DDRs were largely consistent with, or more favorable than, those of the aggregate in 2010.

Regarding BankAtlantic, in 2010 the thrift's lending significantly exceeded the aggregate's lending with respect to the percentage of its loans to African Americans and Hispanics, in minority and LMI census tracts, and to LMI individuals. In 2010, BankAtlantic's DDRs for African Americans were more favorable than those of the aggregate in all of the thrift's combined assessment areas, as well as in the areas of interest to the commenter. For Hispanics, the thrift's DDRs were consistent with the aggregate in all of the thrift's combined assessment areas, as well as in the two MSAs cited by the commenter. In 2011, the DDRs for African American and Hispanic borrowers largely mirrored the thrift's performance in 2010.

The Board is concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain

local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether Branch Bank or BankAtlantic has excluded or imposed higher costs on any group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.³² HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board's consideration of those data has taken into account other information, including examination reports that provide on-site evaluations of compliance with fair lending and other consumer protection laws and regulations by BB&T and its lending affiliates. The Board has also considered information provided by BB&T about its compliance risk-management systems and has consulted with the FDIC, the primary federal supervisor of Branch Bank, and the OCC, the primary federal supervisor of BB&T's subsidiary federal savings bank and BankAtlantic.

Although the HMDA data suggest that there may be opportunities for Branch Bank to improve its outreach and mortgage lending to African Americans and Hispanics and in minority communities, the HMDA data, absent other information, are not evidence of discrimination. Branch Bank is subject to continuous supervision by its supervisory agencies, and it has undergone a number of reviews for compliance with consumer protection and fair lending laws, regulations, and statutes since its 2008 CRA evaluation. Such reviews incorporate additional data beyond the HMDA data reported annually and include reviews of loan files, the articulated policies and procedures of the institution, and assessments of the bank's actual practices. The fair lending reviews include assessments

³² The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

of Branch Bank's underwriting, pricing, and advertising and marketing programs, and examiners have found no evidence of discouragement or discrimination on any prohibited basis. Further, the Board has reviewed Branch Bank's compliance programs and conferred with the FDIC. The Board concludes that Branch Bank's mortgage lending operations and compliance programs are sufficient to ensure compliance with fair lending and other consumer protection laws. In addition, the Board notes that this proposal is designed to round out Branch Bank's presence in certain markets and finds that the bank is well positioned to take advantage of the opportunities presented to enhance its mortgage lending efforts with respect to traditionally underserved racial and ethnic market segments.

The Board has considered all the facts of record, including the CRA performance records of the institutions involved, information provided by BB&T, comments received on the proposal and responses to those comments, and confidential supervisory information. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that convenience and needs considerations, including the CRA performance records of the relevant insured depository institutions, are consistent with approval of the proposal. Moreover, the adoption of BB&T's policies and procedures into BankAtlantic's operations is likely to help improve overall CRA compliance.

Financial Stability

The Dodd-Frank Act added "risk to the stability of the United States banking or financial system" to the list of possible adverse effects that the Board must weigh against any expected public benefits in considering proposals under section 4(j) of the BHC Act.³³

Financial Stability Standard

In reviewing proposals under section 4 of the BHC Act, the Board expects that it will generally find a significant adverse effect if the failure of the resulting firm, or

³³ Dodd-Frank Act, § 604(e), codified at 12 U.S.C. § 1843(j)(2)(A). Other provisions of the Dodd-Frank Act impose a similar requirement that the Board consider or weigh the risks to financial stability posed by a merger, acquisition, or expansion proposal by a financial institution. See sections 163, 173, and 604(d) and (f) of the Dodd-Frank Act.

its inability to conduct regular-course-of-business transactions, would likely impair financial intermediation or financial market functioning so as to inflict material damage on the broader economy. That kind of damage could occur in a number of ways, including seriously compromising the ability of other financial institutions to conduct regular-course-of-business transactions or seriously disrupting the provision of credit or other financial services.

To assess the likelihood that failure of the resulting firm may inflict material damage on the broader economy, the Board will consider a variety of metrics that capture the systemic “footprint” of the merged firm and will also consider the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics would include measures of the size of the resulting firm; availability of substitute providers for any critical products and services offered by the resulting firm; 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.³⁴ These categories are not exhaustive, and additional categories could inform the Board’s decision.³⁵ In addition to these quantitative measures,

³⁴ A large value of a metric for any one category may suggest that distress at the resulting firm is likely to result in material damage to the broader economy. Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system (“USFS”). For example, the pro forma asset size of the resulting firm is expressed in terms of the resulting firm’s pro forma assets as a share of total assets of the USFS. For this purpose, the USFS comprises all U.S. financial institutions used in computing total liabilities for the purposes of calculating the limitation on liabilities of a financial company required under section 622 of the Dodd-Frank Act and includes U.S.-based bank and nonbank affiliates of foreign banking organizations. In connection with its supervision of nonbank financial institutions that the Financial Stability Oversight Council determines could pose a threat to the financial stability of the United States, the Board may require financial and other reporting by these institutions, which would increase the pool of available data for financial stability analyses. See sections 113 and 151 of the Dodd-Frank Act, codified at 12 U.S.C. §§ 5323 and 5341, respectively.

³⁵ The metrics for the resulting entity are not, by themselves, determinative. The Board will take into account all factors that are relevant to a transaction, some of which may not be captured by the metrics.

the Board will consider 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.³⁶

Analysis of the Financial Stability Impact of this Proposal

In this case, the Board has evaluated the foregoing metrics to determine whether the proposal presents a significant risk to the stability of the U.S. banking or financial system. The Board also has considered the relative degree of difficulty of resolving the resulting firm. The Board reviewed publicly available data, data compiled through the supervisory process, and data obtained through information requests to the institutions involved in the proposal, as well as qualitative information.

This transaction would increase BB&T's systemic footprint by only a negligible amount and, therefore, would not raise financial stability concerns. BB&T would control 1.4 percent of the total U.S. deposits after the transaction, placing it well within the 10 percent limitation on total U.S. deposits. The proposed transaction would increase the firm's size and degree of interconnectedness with other financial institutions, and contribute to complexity of the financial system, by an insignificant amount. Furthermore, neither BB&T nor BankAtlantic has market shares that are sufficiently large to suggest they are major providers of any critical financial services. Consequently, the acquisition does not raise concerns about a potential lack of substitute providers for such services.

In addition, the structure and operation of the combined organization would be centered on a conventional commercial banking business. In the event of distress, the resolution process would be handled in a predictable manner by relevant authorities. The combined firm would not exhibit a high degree of organizational or legal complexity and would have limited engagement in cross-border activities, further suggesting that resolution

³⁶ For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order No. 2012-2 (Feb. 14, 2012).

of the combined organization in the event of its failure would not involve a level of cost, time, or difficulty that would jeopardize the stability of the USFS.

Based on these and all the other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Public Benefits

As noted, the Board is required to consider whether the proposed acquisition of BankAtlantic “can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system.”³⁷

The Board has reviewed the above criteria in light of the record in this case. Overall, the record indicates that consummation of the proposal would result in additional benefits to consumers currently served by BankAtlantic. The proposal would allow BB&T to expand the range of financial products and services available to existing customers of BankAtlantic. After the acquisition, BankAtlantic customers would benefit from Branch Bank’s higher legal lending limit, an expanded range of commercial and consumer loan products, a full range of cash management services, a wider variety of mortgage loan products, and access to Branch Bank’s corporate, personal, and employee benefit trust services, insurance, and investment services. In addition, BankAtlantic customers would have access to Branch Bank’s branch locations and ATM network throughout Florida and the Southeastern United States. BB&T has committed to correct BankAtlantic’s deficiencies with respect to overdrafts in customer accounts and to improve BankAtlantic’s processes, procedures, and practices for compliance with the CRA. The proposal would provide the opportunity for significant operational efficiencies for the combined organization, and BB&T expects to realize significant cost savings from consolidating systems, platforms, and corporate staff functions.

³⁷ 12 U.S.C. § 1843(j)(2)(A).

Based on all the facts of record, including the commitments and conditions noted in this case, the Board has concluded that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects. Accordingly, the Board has determined that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposal should be, and hereby is, approved.³⁸ 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 Board's approval is specifically conditioned on compliance by BB&T with the conditions imposed in this order and the commitments made to the Board in connection with the notice. The Board's approval also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),³⁹ and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this

³⁸ A commenter requested that the Board hold a public hearing on the proposal. The Board's regulations provide for a hearing on a notice filed under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comments do not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

³⁹ 12 CFR 225.7 and 225.25(c).

action, these 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 acquisition shall not be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Richmond, acting pursuant to delegated authority.

By order of the Board of Governors,⁴⁰ effective July 31, 2012.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

⁴⁰ Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Duke, Tarullo, Raskin, Stein, and Powell.