

FEDERAL RESERVE SYSTEM

M&T Bank Corporation
Buffalo, New York

Manufacturers and Traders Trust Company
Buffalo, New York

Order Approving the Acquisition of a Savings and Loan Holding Company, Merger of
Depository Institutions, and Establishment of Branches

M&T Bank Corporation, Buffalo, New York, and its subsidiary, Wilmington Trust Corporation, Wilmington, Delaware (collectively, “M&T”), both financial holding companies within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”), have requested the Board’s approval under sections 4(c)(8) and (j) of the BHC Act and section 225.24 of the Board’s Regulation Y¹ to acquire Hudson City Bancorp, Inc. (“Hudson City”), and its wholly owned subsidiary, Hudson City Savings Bank (“HCB”), both of Paramus, New Jersey. HCB is a savings association for purposes of the BHC Act.

In addition, M&T’s subsidiary state member bank, Manufacturers and Traders Trust Company (“M&T Bank”), Buffalo, New York, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”)² to merge with HCB, with M&T Bank as the surviving entity. M&T Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the locations of HCB’s main office and branches.³

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

² 12 U.S.C. § 1828(c).

³ 12 U.S.C. § 321. These locations are listed in the appendix.

Notice of the proposals, affording interested persons an opportunity to submit comments, has been published (77 Federal Register 60119 (October 2, 2012)).⁴ As required by the Bank Merger Act, a report on the competitive effects of the bank merger was requested from the United States Attorney General. The time for submitting comments has expired, and the Board has considered the proposals and all comments received in light of the factors set forth in section 4 of the BHC Act, the Bank Merger Act, and the FRA.

M&T, with consolidated assets of approximately \$97.1 billion, is the 31st largest insured depository organization in the United States, controlling deposits of approximately \$72.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ M&T controls two insured depository institutions, M&T Bank and Wilmington Trust, National Association (“WTNA”), Wilmington, Delaware, which together have retail banking operations in eight states and the District of Columbia.⁶ M&T Bank is the eighth largest insured depository institution in New York, controlling deposits of approximately \$36.0 billion, which represent 2.8 percent of the total deposits of insured depository institutions in that state.⁷ M&T Bank is the 118th largest insured depository institution in New Jersey, controlling deposits of approximately \$103.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Hudson City, with consolidated assets of approximately \$35.4 billion, is the 49th largest insured depository organization in the United States, controlling deposits of

⁴ 12 CFR 262.3(b).

⁵ Asset and nationwide deposit-ranking data are as of June 30, 2015, unless otherwise noted. Insured depository institutions include insured commercial banks, savings and loan associations, and savings banks.

⁶ M&T’s subsidiary banks have retail banking operations in Delaware, Florida, Maryland, New Jersey, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia.

⁷ State deposit data are as of June 30, 2014.

approximately \$18.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Hudson City controls HCB, which operates in Connecticut, New Jersey, and New York. HCB is the fifth largest insured depository institution in New Jersey with approximately \$16.5 billion in deposits, which represent 5.8 percent of the total deposits of insured depository institutions in that state. In addition, HCB is the 35th largest insured depository institution in New York with approximately \$3.1 billion in deposits, and the 16th largest insured depository institution in Connecticut with approximately \$1.0 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in each of those states.

On consummation of the proposals, M&T would become the 25th largest depository organization in the United States, with consolidated assets of approximately \$132.5 billion. M&T would have consolidated deposits of approximately \$90.8 billion, representing less than 1 percent of the total deposits of insured depository institutions in the United States.

M&T would remain the eighth largest depository organization in New York, controlling deposits of approximately \$39.1 billion, representing 3.0 percent of the total deposits of insured depository institutions in the state. In addition, M&T would become the fifth largest depository organization in New Jersey, controlling deposits of approximately \$16.6 billion, representing 5.8 percent of the total deposits of insured depository institutions in the state.

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.⁸ The Board requires that savings associations acquired by bank holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4 of the BHC Act. M&T has

⁸ 12 CFR 225.28(b)(4)(ii).

committed that all the activities of Hudson City and its subsidiaries will conform to those permissible under section 4 of the BHC Act and Regulation Y or be divested.

Interstate and Deposit Cap Analyses

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)⁹ amended section 4 of the BHC Act¹⁰ and the Bank Merger Act¹¹ to provide that, in general, the Board may not approve an application by a bank holding company to acquire an insured depository institution, or an application by one insured depository institution to acquire another insured depository institution, if the home state of the target insured depository institution is a state other than the home state of the applicant and the applicant controls or would control upon consummation of the proposed transaction more than 10 percent of the total amount of deposits of insured depository institutions in the United States. For purposes of the BHC Act and the Bank Merger Act, the home state of M&T and M&T Bank is New York and the home state of HCB is New Jersey.¹² Consummation of the proposals would result in M&T controlling less than 1 percent of the deposits of U.S. insured depository institutions. The proposed acquisition of HCB would not be prohibited by the law of any state in which HCB is located.¹³ Accordingly, in light of all the facts of record, the Board is not required to

⁹ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

¹⁰ Dodd-Frank Act § 623(b), 124 Stat. at 1634–35, codified at 12 U.S.C. § 1843(i)(8).

¹¹ Dodd-Frank Act § 623(a), 124 Stat. at 1634, codified at 12 U.S.C. § 1828(c)(13).

¹² 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). A state bank’s home state is the state by which the bank is chartered. 12 U.S.C. § 1828(c)(13)(C)(ii)(II). A federal savings association’s home state is the state in which the home office of the savings association is located. 12 U.S.C. §§ 1828(c)(13)(C)(ii)(III) and 1841(o)(4)(E).

¹³ The merger of HCB into M&T Bank is subject to the approval of the New York Department of Financial Services (“NYDFS”). See N.Y. Banking Law § 600. M&T Bank has filed the relevant applications with the NYDFS.

deny the proposals under section 4(i) of the BHC Act or the interstate merger provisions of the Bank Merger Act.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.¹⁴ The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of communities to be served.¹⁵ In addition, the Board considers the competitive effects of a proposal to acquire a savings association under the balancing test of section 4(j) of the BHC Act.¹⁶

M&T and Hudson City have subsidiary depository institutions that compete directly in the Metro New York City and Philadelphia banking markets.¹⁷ The Board has reviewed the competitive effects of the proposals in those banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors

¹⁴ 12 U.S.C. § 1828(c)(5).

¹⁵ 12 U.S.C. § 1828(c)(5)(B).

¹⁶ 12 U.S.C. § 1843(j)(2)(A).

¹⁷ The Metro New York City banking market includes Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties and portions of Columbia and Greene counties, all in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union counties and portions of Burlington, Mercer, and Warren counties, all in New Jersey; Pike County and portions of Monroe and Wayne counties, all in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven counties, all in Connecticut.

The Philadelphia banking market includes Bucks, Chester, Delaware, Montgomery, and Philadelphia counties, all in Pennsylvania; and Camden, Cumberland, Gloucester, and Salem counties and portions of Burlington and Mercer counties, all in New Jersey.

that would remain in the banking markets, the relative shares of the total deposits in insured depository institutions in the markets (“market deposits”) that M&T would control,¹⁸ 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”),¹⁹ and other characteristics of the markets.

Consummation of the proposals would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for these markets. On consummation of the proposals, both the Metro New York City and Philadelphia banking markets would become less concentrated, as measured by the HHI, because of the proposed conversion of HCB from a savings association to a full-service bank, and numerous competitors would remain.²⁰

¹⁸ Deposit and market share figures are from the summary of deposits data reported by insured depository institutions as of June 30, 2014, and are based on calculations in which the deposits of thrift institutions are included. The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of 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 53 (1991).

¹⁹ 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 have issued revised Horizontal Merger Guidelines, 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.

²⁰ The HHI would decrease in each market as follows: 15 points to 1355 in Metro New York City and 5 points to 995 in Philadelphia. The decreases result from a pre-merger

The DOJ has conducted a review of the potential competitive effects of the proposals and has advised the Board that consummation of the proposals would not likely 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 proposals.

Based on all the facts of record, the Board concludes that consummation of the proposals would not have a significantly adverse effect on competition or on the concentration of resources in the banking markets in which M&T and Hudson City 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 addition to assessing the competitive effects of a proposal, in every case under the Bank Merger Act the Board must take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, the convenience and needs of the communities to be served, records of compliance with anti-money-laundering laws, and the risk to the stability of the United States banking or financial system. The Board also considers these factors in weighing the possible adverse

weighting of HCB'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 share of M&T's market deposits would be 1.8 percent in Metro New York City and 1.6 percent in Philadelphia. The combined organization would compete in the Metro New York City and Philadelphia banking markets with 236 and 102 other banking organizations, respectively.

effects of the transaction against its public benefits, as required by section 4(j) of the BHC Act.²¹

Consideration of Financial Factors

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 about the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including public and supervisory information regarding capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal.²² The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, 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

²¹ Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of Hudson City “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.” 12 U.S.C. § 1843(j)(2)(A). As part of its evaluation of these 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, records of compliance with anti-money-laundering laws, and the public benefits of the proposal. 12 CFR 225.26; see, e.g., Capital One Financial Corporation, FRB Order No. 2012-2 (February 14, 2012) (“Capital One Order”); Bank of America Corporation/Countrywide, 94 Federal Reserve Bulletin C81 (2008); Wachovia Corporation, 92 Federal Reserve Bulletin C138 (2006); BancOne Corporation, 83 Federal Reserve Bulletin 602 (1997). In acting on a notice to acquire a savings association, the Board reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”). 12 U.S.C. § 2901 et seq.

²² 12 U.S.C. §§ 1828(c)(5) and (11). A commenter alleges that the acquisition is “too large” for M&T. Another commenter expressed concerns regarding the impact of Hurricane Sandy on properties securing mortgage loans extended by Hudson City.

of the proposal and 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 proposals in light of their financial and managerial resources and the proposed business plan.

M&T and its subsidiary depository institutions are well capitalized and would remain so on consummation of the proposed transactions. The proposal is a merger structured as a cash and share exchange.²³ The asset quality, earnings, and liquidity of M&T are consistent with approval. M&T appears to have adequate resources to absorb the costs of the proposals and to complete the integration of the institutions' operations.

Consideration of Managerial Factors

In its evaluation of the managerial factors, the Board considers the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of M&T, Hudson City, and their subsidiary depository institutions, including assessments of their management, risk-management programs, and operations. In addition, the Board has considered information provided by M&T, the supervisory experiences that the Board and other relevant bank supervisory agencies have had with the organizations, and the organizations' records of compliance with applicable banking, consumer, and anti-money-laundering laws, as well as information provided by commenters.

A bank's risk-management program comprises, among other functions, systems and procedures for ensuring regulatory compliance, which includes Bank

²³ At closing, 40 percent of the merger consideration would be paid in cash. The remaining merger consideration would be a stock exchange in which each share of Hudson City common stock would be converted into a right to receive shares of M&T common stock, based on an exchange ratio. M&T would fund the cash portion of the transaction with cash on hand. M&T has the financial resources to effect the transaction.

Secrecy Act/anti-money-laundering (“BSA/AML”) compliance.²⁴ As M&T has acknowledged, following the submission of M&T’s application to acquire Hudson City, examinations conducted by the Federal Reserve Bank of New York (“Reserve Bank”) revealed significant weaknesses in M&T’s risk-management program.²⁵ In particular, examiners identified weaknesses in M&T’s overall BSA/AML compliance management program. The weaknesses included a lack of robust and comprehensive systems for collecting, processing, and updating information needed to make money-laundering risk determinations for every customer and account. There were also weaknesses in M&T’s processes and policies for identifying and reporting suspected structuring activities and other suspicious activities.²⁶

Also during the pendency of M&T’s application, supervisory assessments identified weaknesses in M&T’s consumer compliance program. In late 2014, the Consumer Financial Protection Bureau (“CFPB”), which also has supervisory responsibility over M&T Bank, issued an enforcement action against M&T Bank for deceptive practices relating to advertising, marketing, and promotion of a checking product.²⁷ Examinations conducted by the Reserve Bank revealed weaknesses in M&T’s

²⁴ Federal Financial Institutions Examination Council, FFIEC BSA/AML Examination Manual 28 (2014), available at https://www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2014_v2.pdf.

²⁵ See Robert G. Wilmers, M&T Bank 2013 Annual Report Message to Shareholders, M&T Bank (March 7, 2014) (“2013 Report”), <https://newsroom.mtb.com/document-archive/annual-report-letters/2013-annual-report-message-to-shareholders.htm>.

²⁶ See Written Agreement among M&T Bank Corporation, Manufacturers and Traders Trust Company, and Federal Reserve Bank of New York, Docket Nos. 13-013-WA/RB-HC and 13-013-WA/RB-SM (June 17, 2013), available at <http://www.federalreserve.gov/newsevents/press/enforcement/enf20130617a1.pdf>.

²⁷ See Consent Order between Manufacturers and Traders Trust Company and Consumer Financial Protection Bureau, File No. 2014-CFPB-0016 (October 9, 2014), available at http://files.consumerfinance.gov/f/201410_cfpb_consent-order_m-t.pdf.

consumer compliance risk assessment, complaint management, and compliance monitoring and testing.

The identified weaknesses in M&T's BSA/AML and consumer compliance programs raised concerns about whether the company's managerial resources and the managerial resources of the proposed combined organization were consistent with approval. Before the Board completed its evaluation, M&T requested a stay of the Board's consideration of the proposals to afford M&T an opportunity to address the identified weaknesses. Based on the specific facts and circumstances of this case, particularly that the weaknesses first surfaced after consideration of M&T's proposals was well in progress, the Board suspended consideration of the proposals.²⁸ Thereafter, M&T dedicated significant financial and managerial resources to addressing the identified weaknesses.²⁹ The remedial actions taken by M&T required a significant period of time,³⁰ and M&T and Hudson City extended the term of their merger agreement multiple times.³¹

²⁸ The Board expects that a banking organization will resolve all material weaknesses identified by examiners before applying to engage in expansionary activity. See, e.g., SR Letters 14-2 and 13-7. As noted, M&T's issues largely arose during processing of this application, and the Board took the highly unusual step of permitting the case to pend while M&T addressed its weaknesses. The Board does not expect to take such action in future cases. Rather, in the future, if issues arise during processing of an application, the Board expects that a banking organization will withdraw its application pending resolution of any supervisory concerns.

²⁹ See 2013 Report.

³⁰ See Robert G. Wilmers, M&T Bank 2014 Annual Report Message to Shareholders, M&T Bank (March 5, 2015), <https://newsroom.mtb.com/document-archive/annual-report-letters/2014-annual-report-message-to-shareholders.htm>.

³¹ See Press Release, M&T Bank Corporation (April 12, 2013), available at <https://newsroom.mtb.com/press-releases/mampt-and-hudson-city-make-announcement-relating-to-the-proposed-merger-of-the-two-companies.htm>; Press Release, M&T Bank Corporation (December 17, 2013), available at <https://newsroom.mtb.com/press-releases/mt-and-hudson-city-announce-extension-of-the-merger-agreement.htm>; Press Release, M&T Bank Corporation (December 9, 2014), available at <https://newsroom.mtb.com/press-releases/hudson-city-bancorp-inc-and-mt-bank->

M&T has taken significant steps to remediate the identified BSA/AML and consumer compliance weaknesses and to implement comprehensive programs related to combatting money-laundering and complying with consumer protection laws and regulations. M&T also has provided the Board with numerous submissions relating to these efforts, and the Board has considered supervisory reviews related to these efforts.

M&T has made significant changes to its BSA/AML compliance program as required in M&T's Written Agreement with the Reserve Bank. In particular, M&T has instituted important enhancements to key systems and processes in its BSA/AML compliance program, including, for example, processes for collecting information to determine the extent to which a customer presents a money-laundering risk to the bank and for escalating accounts to senior management that are found to have repeatedly engaged in suspicious activity. In addition, M&T has conducted internal testing of, and has had independent third-party review to confirm, the efficacy of the changes the company has instituted to its BSA/AML compliance program.

Similarly, M&T has made significant changes to its consumer compliance program to address previously identified weaknesses in the program. The changes M&T has implemented include, for example, the establishment of a process for managing consumer complaints and a process for rating the risks of noncompliance relating to laws. Where the risk of noncompliance is deemed to be moderate or high, M&T has established a schedule for testing compliance more frequently than peer institutions.

The Board has considered the results of several reviews conducted by Reserve Bank examiners of the actions M&T has taken to address the weaknesses in its BSA/AML and consumer compliance programs. The Board has also consulted with, and considered the views of, the CFPB.

corporation-announce-further-extension-of-time-to-complete-proposed-merger-to-april-30-2015.htm; Press Release, M&T Bank Corporation (April 17, 2015), available at <https://newsroom.mtb.com/press-releases/ HUDSON-CITY-BANCORP-INC-AND-MT-BANK-CORPORATION-ANNOUNCE-FURTHER-EXTENSION-OF-TIME-TO-COMPLETE-PROPOSED-MERGER-TO-OCTOBER-31-2015.htm>.

In addition to considering the steps M&T has taken to address the weaknesses noted above, the Board has considered M&T's plans for operating the combined organization. M&T would bring significant financial and other resources to address the post-acquisition integration process for these proposals. M&T's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner. M&T has established a plan to integrate existing management and personnel of the Hudson City organization in a manner that augments the combined organization's management team.³²

Based on all the facts of record, including the steps M&T has implemented to address identified issues related to BSA/AML and consumer compliance, M&T's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, and subject to the conditions noted in this Order, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved, as well as the records of effectiveness of the organizations in combatting money-laundering activities, are consistent with approval.

This transaction would significantly increase the scope of M&T's operations by, among other things, expanding its geographic footprint and significantly increasing its asset size. The Board expects M&T to ensure that its risk-management framework and methodologies, as well as its compliance functions, are fully implemented, functioning effectively, and commensurate with its size and complexity, and that all risks within the organization are proactively identified and promptly addressed. The Board also expects that M&T will not engage in any expansionary activities, except for establishing branches in historically underserved communities, until

³² At closing, M&T and M&T Bank would augment their senior management teams with managers of Hudson City and HCB. In addition, the CEO of Hudson City would be appointed to the boards of M&T and M&T Bank, and all current members of the Hudson City board of directors would be appointed to a newly created regional advisory board that would advise M&T Bank on the activities in Hudson City's former market area.

supervisors are satisfied that the integration with Hudson City has been satisfactorily completed and examiners have confirmed that all risk-management and compliance systems at M&T are fully implemented, functioning effectively, adequate for proactively identifying and promptly addressing all risks within the combined organization, and reflective of its greater size and complexity. The Board will monitor M&T's efforts in this regard through the supervisory process.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.³³ The Board also considers this factor in weighing the possible adverse effects against the public benefits of the transaction, as required by section 4(j) of the BHC Act. 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 and whether the proposal would result in public benefits. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.³⁴ 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,³⁵ 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.³⁶

In addition, the Board considers the banks' overall compliance record and the results of recent fair lending examinations. Fair lending laws require all lending

³³ 12 U.S.C. § 1828(c)(5).

³⁴ 12 U.S.C. § 2901 et seq.

³⁵ 12 U.S.C. § 2901(b).

³⁶ 12 U.S.C. § 2903.

institutions to provide loan applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics.

The Board also considers the supervisory assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicants, and comments received on the proposal. The Board also may consider the applicant institution's business model, marketing and outreach plans, plans following consummation, and any other information the Board deems relevant.

Public Comments Regarding the Proposal

In this case, the Board received comments from 27 commenters in support of the proposals. These commenters described favorable experiences with M&T and commended the company and its management for the bank's community outreach efforts and support for various community development programs and initiatives, such as financial literacy counseling, homebuyer workshops, and housing rehabilitation. Commenters also praised the level of M&T Bank's CRA-eligible grants, stating that the level is the highest among commercial banks in New York, New York, as a percentage of deposits. These commenters contend that the proposals would benefit consumers and the communities served by the combined organization.

The Board received 11 comments from four commenters objecting to the proposals principally on the basis of HCB's CRA performance record and M&T Bank's and HCB's records of extending home mortgage credit to minority individuals.³⁷

³⁷ Commenters also urged M&T to provide certain products and services at the combined organization, including free or low-cost checking accounts; fee and service charge waivers for LMI customers, senior citizens, and customers with disabilities; and lending programs for first-time homebuyers and small businesses. One commenter alleges that M&T refused to provide loans for the purchase of condominium units in a converted Washington, D.C., apartment building, during the period following M&T's 2009 acquisition of Provident Bankshares. 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 does not require an

Commenters criticized HCB's CRA performance record and allege that M&T had not sufficiently explained how it would improve HCB's CRA performance following consummation of the proposals. A commenter alleges that HCB exhibited poor CRA performance in New Jersey, with a lower level of lending to LMI borrowers compared to other lenders in the bank's assessment areas and branch locations concentrated in middle- and upper-income neighborhoods. This commenter also alleges that, in New Jersey, three of HCB's four branches in LMI neighborhoods did not operate on Saturday, unlike HCB's branches in middle- and upper-income neighborhoods, most of which operate on Saturday.³⁸ In addition, a commenter alleges that HCB did not establish adequate relationships with community groups in New Jersey.

Commenters also criticized M&T Bank's and HCB's record of mortgage lending to minority individuals, based on data reported for 2011 and 2013 under the Home Mortgage Disclosure Act of 1975 ("HMDA").³⁹ These commenters allege that

institution to provide any specific types of products or services nor does it prescribe the costs to be charged for them.

³⁸ M&T represents that in 2012, HCB extended branch hours in its branches in Hudson and Essex counties, all in New Jersey, by opening two branches on Saturdays and extending lobby hours at a third branch.

³⁹ 12 U.S.C. § 2801 *et seq.* One commenter also alleges that a "mystery shopper" program conducted by the commenter showed that M&T Bank engaged in disparate treatment of African American and Hispanic borrowers compared to white borrowers in home equity conversion mortgage loan ("reverse mortgage loan") originations. The commenter filed a complaint concerning these allegations against M&T with the Department of Housing and Urban Development, which dismissed the complaint after review.

A commenter argues that the proposal should not be approved because a court complaint was filed against M&T Bank by a community group alleging that M&T discriminated against minority women applicants by steering them towards certain loan products and neighborhoods. Fair Housing Justice Center, Inc. v. M&T Bank Corporation, No. 1:15-cv-00779-KBF (S.D.N.Y. 2015). The parties agreed to settle the matter, and the case was dismissed with prejudice and without any admission of wrongdoing.

M&T Bank and HCB made disproportionately fewer conventional residential mortgage loans to African American and Hispanic borrowers than to white borrowers, and that the institutions denied more applications for conventional home purchase loans by African American and Hispanic borrowers compared to white borrowers.⁴⁰ A commenter also contended that M&T Bank made more higher-priced HMDA-reportable loans to African American borrowers than to white borrowers,⁴¹ and denied disproportionately more HMDA-reportable loans to African American borrowers than to white borrowers.⁴²

M&T Bank's and HCB's Businesses and M&T's Responses to Comments

M&T Bank's lending activities are focused on consumers residing in Delaware, Maryland, New York, Pennsylvania, Virginia, and the District of Columbia, and on small- and medium-size businesses based in those areas. Commercial and industrial loans and loans secured by one-to-four family residential properties make up approximately 24 and 21 percent, respectively, of the bank's total loan portfolio.⁴³ As of June 30, 2012, M&T Bank had 764 domestic banking offices.

HCB is a community- and consumer-oriented retail savings association offering traditional retail deposit and loan products, such as conforming one-to-four

⁴⁰ With respect to M&T Bank, these allegations related to the Nassau–Suffolk, New York, Metropolitan Division (“Long Island MD”); the Baltimore–Towson, Maryland, Metropolitan Statistical Area (“MSA”); and the New York, New York; Philadelphia, Pennsylvania; and Washington, D.C., areas. With respect to HCB, these allegations related to the Long Island MD; the New York, New York, area; the Bridgeport–Stamford–Norwalk, Connecticut, MSA (“Bridgeport MSA”); the Newark–Union, New Jersey–Pennsylvania, Metropolitan Division; and the New York–White Plains–Wayne, New York–New Jersey, Metropolitan Division.

⁴¹ For example, commenters allege that in 2013, 5.41 percent of M&T's loans to African American borrowers were above the rate spread, compared to 2.99 percent of its loans to white borrowers.

⁴² Commenters allege that M&T denied 26.26 percent of applications from African American borrowers, compared to 13.3 percent of applications from white borrowers.

⁴³ Manufacturers and Traders Trust Company, Consolidated Report of Condition and Income, at 19–20 (data as of June 30, 2015).

family residential mortgages, time deposits, checking accounts, and savings accounts. HCB operates a total of 135 branches throughout the New York, New York, and Philadelphia, Pennsylvania, metropolitan areas.

M&T argues that focusing solely on denial disparities on conventional home purchase mortgage loans reported under HMDA does not accurately portray M&T Bank's and HCB's home mortgage lending record. In this regard, M&T contends that M&T Bank is a significant originator of government-sponsored mortgage loans and offers its own portfolio of affordable mortgages, which are designed to enhance the opportunities for borrowers across all socioeconomic strata to qualify for home purchase loans.⁴⁴ M&T argues that these loans provide more flexible features than conventional home purchase mortgage loans, including below-market rates, less cash required out-of-pocket from borrowers, lender credits that can be used for closing-cost assistance, and reduced down payment and reserve requirements. Moreover, M&T contends that M&T Bank has numerous lending programs with features that do not qualify as conventional home purchase loans and that these programs generally offer loans with higher risk levels and loan-to-value ratios, lower down payment requirements, and require smaller cash outlays when compared to conventional home mortgage loans.⁴⁵

With respect to HCB, M&T represents that all loans originated by the bank, regardless of the borrower's race or ethnicity, are subject to the same credit underwriting and pricing standards used industry-wide, including loan-to-value ratios and debt-to-income ratios. Moreover, M&T argues that a more accurate picture of HCB's

⁴⁴ M&T Bank is an active provider of loans backed by the Federal Housing Administration ("FHA"), United States Department of Agriculture ("USDA"), and Department of Veterans Affairs ("VA"), as well as state-sponsored programs. For example, during 2010 through 2012, M&T Bank funded 28,961 federally backed loans worth approximately \$5.3 billion and 958 loans backed by the State of New York Mortgage Agency worth approximately \$127.6 million.

⁴⁵ For example, M&T Bank's proprietary versions of the standard FHA, VA, and USDA mortgage products provide LMI borrowers and those purchasing in LMI census tracts with discounted rates and lender credits that can be used for closing-cost assistance.

mortgage lending activities emerges when considering loan types other than the conventional home purchase loans on which commenters focused, such as refinance loans and home-improvement loans.⁴⁶

M&T further contends that the apparent denial disparities in the areas identified by the commenters for both M&T Bank and HCB are due to the creditworthiness of the applicants and are not the result of discrimination on a prohibited basis. In this regard, M&T argues there were nondiscriminatory reasons for denial that include inadequate collateral, insufficient income for the amount of credit, excessive obligation in relation to income, insufficient funds to close, lack of documentation or incomplete credit application, or inability to obtain mortgage insurance.

Records of Performance under the CRA

As indicated above, 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 in light of examinations and other supervisory information as well as information and views provided by the appropriate federal supervisors.⁴⁷

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.⁴⁸ An

⁴⁶ For example, M&T argues that, although HCB originated only 10 conventional home purchase loans to African American borrowers in the New York, New York, area in 2011, HCB approved 24 of 25 home-purchase loan applications by mixed-race applicants and 44 of 56 of such loan applications by Hispanic applicants in the same area in 2011. In addition, HCB approved 50 percent of applications by African American borrowers and approximately 65 to 70 percent of applications by Hispanic borrowers for refinance and home improvement loans during 2011 in the New York, New York area.

⁴⁷ See Interagency Questions and Answers Regarding Community Reinvestment, 75 Federal Register 11642, 11665 (March 11, 2010).

⁴⁸ 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 HMDA data, 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 the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; the geographic distribution of such loans, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; the distribution of such loans based on borrower characteristics, including the number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;⁴⁹ the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

⁴⁹ Examiners also consider the number and amount 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).

The Board considers the overall CRA rating and the rating on the lending test to be important indicators, when taken into consideration with other factors, in determining whether a depository institution is helping to meet the credit needs of its communities.

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.⁵⁰ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

The Board has considered all the facts of record, including reports of examination of the CRA performance of M&T Bank and HCB, the fair lending and compliance records of both banks, the supervisory views of the Office of the Comptroller of the Currency ("OCC") and the CFPB, confidential supervisory information, information provided by M&T, and the public comments received on the proposal.

CRA Performance of M&T Bank

M&T Bank, the lead bank subsidiary for M&T, was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the Reserve Bank, as of July 9, 2012 ("M&T Bank Evaluation").⁵¹ M&T Bank received a "High

⁵⁰ Other data relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

⁵¹ The M&T Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test, the Investment Test, and the Service Test was from January 1, 2010, through June 30, 2012. Examiners considered HMDA-related and CRA-reportable small business loans originated between January 1, 2010, and December 31, 2011. Examiners also considered multifamily loans originated by M&T Real Estate Trust and M&T Realty Corporation, both subsidiaries of M&T Bank.

Satisfactory” rating on the Lending Test and “Outstanding” ratings on both the Investment Test and the Service Test.

In assigning M&T Bank a “High Satisfactory” rating for the Lending Test, examiners found that M&T Bank demonstrated good responsiveness to the retail credit needs of its assessment areas. The bank originated a majority of its loans within its assessment areas and had good overall distribution of loans among borrowers of different income levels and businesses of different sizes.⁵² Examiners noted that the bank’s overall geographic distribution of HMDA-related and small business loans reflected good penetration in LMI geographies.⁵³ Examiners also noted that M&T Bank was a leader in community development lending and used various innovative and flexible products to enhance the level of lending to LMI geographies and borrowers. In addition, examiners determined that M&T’s community development lending, which had increased markedly since the previous CRA public evaluation, was responsive to community needs and served a variety of purposes, including financing of affordable housing, promoting economic development, revitalizing communities located in LMI tracts and empowerment zones, and providing services to benefit LMI individuals.

In evaluating the Investment Test, examiners assigned M&T Bank an “Outstanding” rating based on good to excellent performance in the bank’s key

⁵² Examiners noted good loan distribution among borrowers of different income levels and businesses of different sizes in Maryland; New York; Pennsylvania; and the Cumberland, Maryland–West Virginia, MSA (“Cumberland MSA”). Examiners noted adequate loan distribution in Delaware; Florida; Virginia; the New York–Northern New Jersey–Long Island, New York–New Jersey–Pennsylvania, MSA (“New York City MSA”); the Philadelphia–Camden–Wilmington, Pennsylvania–New Jersey–Delaware–Maryland, MSA (“Philadelphia MSA”); and the Washington–Arlington–Alexandria, D.C.–Virginia–Maryland–West Virginia, MSA (“Washington MSA”).

⁵³ Examiners noted excellent geographic distribution in the Washington MSA and good distribution in Maryland, New York, Pennsylvania, Virginia, and the New York City MSA. Examiners noted adequate geographic distribution in Delaware, Florida, and the Cumberland and Philadelphia MSAs.

assessment areas—i.e., those with high concentrations of deposits and lending.⁵⁴ Examiners found that M&T Bank demonstrated good responsiveness to community credit needs and made use of complex investments to support community development initiatives. Examiners noted that more than 80 percent of the bank’s qualifying investments supported the development of affordable housing.

For the Service Test, examiners found M&T Bank’s performance to be excellent.⁵⁵ Examiners observed that the bank’s branches were readily accessible to all portions of its assessment areas and that the bank’s record of opening and closing branches had not adversely affected the overall accessibility of its delivery systems. Examiners found that M&T Bank was a leader in providing community development services, which included sponsorship and participation in a significant number of seminars and presentations relating to affordable mortgages, small business assistance, and other banking education offered throughout its assessment areas.

CRA Performance of WTNA

WTNA was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the OCC, as of May 6, 2013 (“WTNA Evaluation”).⁵⁶ Examiners noted that the bank demonstrated an adequate level of community development lending, qualified investment activity, and community development

⁵⁴ Examiners noted excellent investment performance in Maryland, New York, and the Washington MSA; good investment performance in Delaware, Pennsylvania, and the Cumberland, New York City, and Philadelphia MSAs; and adequate investment performance in Florida and Virginia.

⁵⁵ Examiners noted excellent service performance in Maryland, New York, Pennsylvania, and the Washington MSA; good service performance in Virginia and the Cumberland and New York City MSAs; and adequate service performance in Delaware, Florida, and the Philadelphia MSA.

⁵⁶ WTNA is a limited purpose bank for purposes of the CRA and was evaluated under the community development test. Examiners reviewed community development activities from May 18, 2009, through May 5, 2013. In assessing WTNA, OCC examiners reviewed WTNA’s qualified community development investments, loans, and services and also considered the qualified community development activities of M&T Bank. See 12 CFR 25.25(d).

services. Examiners also noted that the bank demonstrated occasional use of innovative or complex qualified investments, community development loans, or community development services, and that the bank demonstrated excellent responsiveness to credit and community development needs in its assessment areas.

M&T's Efforts since the M&T Bank Evaluation

M&T represents that, since the M&T Bank Evaluation, it has continued to build upon its commitment to provide financial services to LMI individuals, within LMI geographies, to small businesses, and to underserved communities. For instance, M&T Bank has made community development loans in Delaware, Maryland, New Jersey, New York, and the District of Columbia to increase affordable housing, revitalize LMI geographies, increase educational services to children of LMI households, and develop medical facilities. The bank also has committed to CRA-qualified investments and provided community development grants in Delaware, New York, and Pennsylvania. In addition, the bank has offered a suite of products and services to address the credit needs of LMI borrowers, including mortgage loan products and unsecured installment loan products.

As noted above, earlier in the pendency of M&T's application, supervisory assessments by the Reserve Bank disclosed weaknesses in M&T's consumer compliance program. Since that time, M&T has undertaken efforts to address these weaknesses and provided the Board with substantial information relating to these efforts. M&T has made significant progress toward implementing a program acceptable to the Board and commensurate with the expanded scale and scope of the combined organization. In particular, M&T has implemented a compliance program that includes appropriate risk assessments, testing, and monitoring to ensure compliance with all consumer protection laws and regulations. Under this program, M&T conducts compliance testing more frequently than peer institutions. In addition, M&T has enhanced its processes for evaluating legal and regulatory changes applicable to the organization and for handling consumer complaints.

Reserve Bank examiners have conducted multiple on-site reviews to evaluate M&T's efforts to implement an enhanced consumer compliance program. These reviews indicate that M&T has made changes and enhancements to its consumer compliance systems and processes and has taken steps to address weaknesses that were identified in the examination process. Examiners noted that there are additional enhancements that can be made to some processes and systems to further improve the program and make it more effective. The Board has considered information provided by M&T and examiners' views regarding the improvements made by M&T to its consumer compliance program. The Board expects that M&T will swiftly and fully implement the additional improvements to enhance further the effectiveness of its consumer compliance program.

CRA Performance of HCB

HCB was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Office of Thrift Supervision,⁵⁷ as of March 14, 2011 ("HCB Evaluation").⁵⁸ HCB received a "Low Satisfactory" rating for the Lending Test, a "High Satisfactory" rating on the Investment Test, and a "Needs to Improve" rating on the Service Test.⁵⁹

⁵⁷ The supervision of federally chartered savings associations was transferred to the OCC effective July 21, 2011. See Dodd-Frank Act § 312, Pub. L. No. 111-203, 124 Stat. 1376, 1521-23 (2010), codified at 12 U.S.C. § 5412.

⁵⁸ The HCB Evaluation was conducted using Large Savings Association CRA Examination Procedures. Examiners analyzed HMDA-reportable mortgage loans originated and purchased from January 1, 2008, through December 31, 2010, for most factors under the Lending Test. Examiners considered community development loans originated from April 2, 2008, through March 14, 2011.

⁵⁹ The HCB Evaluation included a full-scope review of three assessment areas: the New York-Newark-Bridgeport, New York-New Jersey-Connecticut-Pennsylvania, Combined Statistical Area; the Burlington County, New Jersey, assessment area; and the Suffolk County, New York, assessment area. A limited-scope review was performed in the Camden County, New Jersey, assessment area and the Gloucester County, New Jersey, assessment area.

In evaluating the Lending Test, examiners noted that HCB was among the market leaders in HMDA mortgage lending based on its volume of lending from 2008 through 2010. Through loan originations and purchases, HCB's lending to LMI geographies was consistent with lending by the aggregate of lenders in HCB's assessment areas. The bank also deployed two innovative and flexible loan products with reduced interest rates to meet community credit needs. The examiners assigned HCB a "Low Satisfactory" rating because, in examiners' view, the level of community development lending was low compared to the resources available to the bank, and examiners suggested that HCB could improve its market share of community development lending.

Examiners assigned HCB a "High Satisfactory" rating on the Investment Test based on its level of qualified community development investments. From 2008 through 2010, the bank made significant investments in securities backed by mortgage loans made to LMI borrowers, with the majority of such loans having been originated in HCB's assessment areas. These investments represented a significant increase from the prior evaluation period. HCB also doubled its investment in a nonprofit community development financial institution that provides innovative financing and technical assistance to foster the creation of quality homes, education facilities, and employment opportunities in underserved communities in New Jersey. Examiners noted that HCB made qualified community development donations during the evaluation period, including contributions to HCB's affiliated charitable foundation.

In evaluating the Service Test, examiners noted that the bank was involved in a variety of community development service activities, including service to organizations that provide affordable housing and transitional housing to disadvantaged youth. The bank also sponsored, and provided employees for, foreclosure workshops and seminars. Examiners also observed that HCB provides a wide range of traditional thrift deposit and loan products through a substantial network, with most branches open on Saturdays and having ATMs, drive-up windows, walk-up windows, or a combination thereof, for customer convenience. Examiners also noted that HCB's branch locations did not inconvenience LMI populations in the bank's combined assessment area.

However, examiners assigned the bank a Service Test rating of “Needs to Improve,” citing the need to improve the percentage of the bank’s branch locations in LMI geographies and the need for greater involvement by the bank’s officers in community development activities.

HCB’s Mortgage Lending Practices and M&T’s Plans for the Combined Organization

On September 24, 2015, the DOJ, the CFPB, and HCB announced a proposed Consent Order to resolve the agencies’ claims that HCB has engaged in redlining of majority Black and Hispanic neighborhoods in HCB’s three primary assessment areas⁶⁰ and thereby denied an equal opportunity to, and discouraged the residents of these neighborhoods to, obtain mortgage loans on account of the racial composition of those neighborhoods.⁶¹ HCB agreed to a program to ensure that it provides credit on an equal and nondiscriminatory basis throughout its assessment areas, including by, among other things, taking all reasonable, practicable actions, consistent with safe and sound operation, to increase lending, open two new branches, provide subsidized loan offerings, and expand outreach and education efforts in the identified minority neighborhoods and census tracts. HCB also agreed to ensure that it makes credit available in minority neighborhoods and census tracts in the three assessment areas on no less favorable a basis than it does in nonminority neighborhoods and census tracts, and not to otherwise engage in discrimination prohibited by the Equal Credit Opportunity Act⁶² or the Fair Housing Act.⁶³

⁶⁰ These areas are the New York City, Bridgeport, and Philadelphia MSAs.

⁶¹ Press Release, Consumer Financial Protection Bureau (September 24, 2015), available at <http://www.consumerfinance.gov/newsroom/cfpb-and-doj-order-hudson-city-savings-bank-to-pay-27-million-to-increase-mortgage-credit-access-in-communities-illegally-redlined/>; Press Release, Department of Justice (September 24, 2015), available at <http://www.justice.gov/opa/pr/justice-department-and-consumer-financial-protection-bureau-reach-settlement-hudson-city>.

⁶² 15 U.S.C. § 1691 et seq.

⁶³ 42 U.S.C. § 3601 et seq.

M&T has agreed to address the weaknesses at HCB and contends that M&T's record of providing banking services in the areas served by HCB demonstrates M&T's ability to implement these improvements effectively. M&T notes that M&T Bank already operates in the assessment areas identified in the HCB Consent Order and has continuously received the highest available CRA rating since 1989. M&T Bank will expand the CRA activities of the combined bank to be commensurate with its expanded size and geographic scope. For example, following consummation, the CRA lending, investment, and service programs of M&T Bank would be applied to the operations and activities of HCB in the communities it serves.

The integration of HCB into M&T Bank will expand the CRA assessment areas for the combined bank. For example, in New York, although HCB currently operates primarily in Staten Island and Westchester County, the combined bank would serve all five boroughs of New York City. As a result, the combined bank would serve a broader and more diversified geographic area than either M&T Bank or HCB on a standalone basis. Upon consummation of the proposal and the merger of HCB into M&T Bank, M&T will assume the obligations of HCB, including HCB's obligations under the Consent Order to open two new branches in majority-minority census tracts within HCB's current assessment areas.

Moreover, M&T has stated that it will expand the products and services that HCB offers in HCB's current assessment areas to include the products and services provided by M&T Bank, and it will implement the CRA program developed by M&T Bank at the offices of HCB.⁶⁴ In particular, M&T plans for the combined bank to continue to offer innovative and flexible loan products throughout its assessment areas. For example, M&T would offer its version of the FHA Community Mortgage throughout the expanded geographic area served by the combined bank. Similarly, the combined bank will continue to offer M&T Bank's suite of government-backed mortgage products,

⁶⁴ These communities include communities in New Jersey, where according to one commenter, HCB generally has a poor CRA performance record.

such as FHA loans and loans backed by the State of New York Mortgage Agency. These products include features such as below-market rates, less cash required out-of-pocket from borrowers, lender credits that can be used for closing-cost assistance, and reduced down payment and reserve requirements.

The combined organization is expected to continue M&T Bank's current approach to promoting these affordable mortgage products. M&T notes that M&T Bank focuses its advertising for such affordable mortgage loan products in newspapers that are targeted to reach minority and/or LMI residents and in community-based newsletters that serve those residents. M&T Bank also promotes its affordable mortgage products through referrals, loan officer interactions with customers, and participation with nonprofit housing counselors and community reinvestment organizations. M&T states that it has found that participation with such organizations in community events, such as housing fairs, seminars, and similar events, is an effective means to promote the features and benefits of its affordable mortgage loan products.

M&T also plans to continue to provide community sponsorships that benefit LMI and minority neighborhoods. M&T's existing community sponsorships include, for example, financial support for organizations like the Westminster Community Charter School, an elementary school that serves LMI and minority neighborhoods in Buffalo, New York.

Following consummation of the proposal, the Board expects that M&T will cooperate fully with the DOJ and the CFPB and that M&T will ensure that the combined organization commits the appropriate resources to integrate the operations of HCB into those of M&T Bank and fulfill all outstanding obligations of HCB under applicable law and the Consent Order.

Public Benefits of the Proposals

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal

would result in public benefits. Commenters allege that these proposals would not provide a clear or significant public benefit.⁶⁵

In this regard, M&T represents that the proposals would provide existing customers of HCB with access to an expanded branch and ATM network and would offer additional products and services to HCB's customers that are not currently offered by HCB, including products and services to benefit LMI individuals and communities in HCB's New Jersey and Connecticut markets.⁶⁶ For example, HCB customers would have access to M&T's deposit, lending, investment, wealth advisory, and institutional client services, as well as a suite of commercial loan and deposit products. HCB's retail customers would benefit from M&T Bank's offering of consumer loans and mortgages, including various conventional mortgage products; FHA and VA mortgages, including

⁶⁵ In addition, a commenter expressed concerns that M&T Bank would close branches in New York and thereby decrease access to banking services in LMI neighborhoods. M&T does not currently have any plans to close any HCB or M&T Bank branches upon an acquisition of HCB and is still evaluating potential branch consolidation opportunities. M&T Bank has identified three potential consolidation opportunities where M&T Bank branches are in close proximity to HCB branches and where the characteristics of the respective branches—i.e., the floor plans, customer servicing elements (e.g., drive-up, teller lines), branch condition, and location—might support a consolidation decision.

In this regard, M&T Bank's branch closing record will continue to be reviewed by Reserve Bank examiners in the course of conducting CRA performance evaluations. Moreover, federal law requires an insured depository institution to provide notice to the public and to the appropriate federal banking agency before closing a branch. Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 Federal Register 34844 (June 29, 1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal banking agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

⁶⁶ Commenters expressed concerns that M&T would not introduce new products and services to the customers of Hudson City, especially to its LMI customers.

renovation loans under section 203(k) of the National Housing Act;⁶⁷ and a variety of CRA products focused on the needs of LMI borrowers.

In addition, following the merger of HCB with M&T Bank, the CRA programs of M&T Bank would be applied to the operations and activities of HCB. M&T notes that M&T Bank's CRA program has been applied to the operations and activities of other banks that have been merged into M&T Bank, and M&T Bank has maintained an "Outstanding" CRA performance record in each CRA public evaluation following these actions. In light of this record, M&T argues that the proposals would produce CRA benefits through increased CRA activities and improved CRA performance in the communities HCB serves.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, consultations with the OCC and the CFPB, confidential supervisory information, information provided by M&T, and the public comments on the proposals. Based on that review, the Board concludes that the proposals would result in public benefits that would outweigh the potential adverse effects and that the convenience and needs factor is consistent with approval.

These proposals represent a significant expansion by M&T. As noted above, the Board expects M&T to complete its efforts to implement effective consumer compliance and management programs across the entire enterprise and expects that M&T will implement a consumer compliance program that is commensurate with the size and complexity of the combined organization.

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

⁶⁷ 12 U.S.C. § 1709(k).

weigh against any expected public benefits in considering a proposal under section 4(j) of the BHC Act, and as a factor that must be considered under the Bank Merger Act.⁶⁸

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the merged 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.⁶⁹ 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.⁷⁰

In this case, the Board has considered information relevant to the risks to the stability of the U.S. banking or financial system, including public comments on the proposals.⁷¹ Both the acquirer and the target are predominantly engaged in retail financial activities.⁷² The pro forma organization would have minimal cross-border

⁶⁸ Dodd-Frank Act §§ 604(e)(1) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601–02 (2010), amending 12 U.S.C. §§ 1843(j)(2)(A) and 1828(c)(5).

⁶⁹ Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

⁷⁰ For further discussion of the financial stability standard, see Capital One Order.

⁷¹ A commenter generally alleges that M&T seeks to become “too big to fail.”

⁷² M&T accepts retail deposits and engages in mortgage lending, mortgage and credit card servicing, commercial real estate financing, small business lending, credit card and other consumer lending, wealth management, institutional client services, and securities

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 U.S. 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.

Additional Public Benefits of the Proposals

As noted, in connection with a notice under section 4(c)(8) of the BHC Act, section 4(j) of the BHC Act requires the Board to “consider whether performance of the activity by a bank holding company or a subsidiary of such company 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.”⁷³ As noted, commenters asserted that the proposed transactions would not provide a clear or significant public benefit. As discussed above, the Board has considered that the proposed transactions would provide greater services, product offerings, and geographic scope to customers of Hudson City. In addition, the acquisitions would ensure continuity and strength of service to customers of Hudson City.

brokerage services. Hudson City offers savings accounts, certificates of deposit, and residential mortgage loans. In each of its activities, M&T has, and as a result of the proposals would continue to have, a small share on a nationwide basis, and numerous competitors would remain.

⁷³ 12 U.S.C. § 1843(j)(2)(A).

The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y, Board precedent, and this Order is not likely to result in significant 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. On the basis of the entire record, including conditions noted in this Order, and for the reasons discussed above, the Board believes that the balance of benefits and potential adverse effects related to competition, financial and managerial resources, convenience and needs, financial stability, and other factors weigh in favor of approval of these proposals. Accordingly, the Board determines that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

Establishment of Branches

As noted, M&T Bank has applied under section 9 of the FRA to establish branches at the current locations of HCB.⁷⁴ The Board has assessed the factors it is required to consider when reviewing an application under that section.⁷⁵ For the reasons discussed in this Order, the Board finds those factors to be consistent with approval.

⁷⁴ 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. Thus, state member banks may establish branches at locations acquired through acquisition if the branches are located in states in which the state member bank had a presence prior to the acquisition. See sections 5455(c)(2) and (e) of the Revised Statutes of the United States, 12 U.S.C. § 36(c)(2) and (e). In addition, section 341 of the Dodd-Frank Act provides authority for savings associations that become banks to continue to operate branches that they operated immediately before becoming banks. Dodd-Frank Act § 341, Pub. L. No. 111-203, 124 Stat. 1376, 1540–41 (2010), codified at 12 U.S.C. § 5451.

⁷⁵ 12 U.S.C. §§ 321 and 322; 12 CFR 208.6. Specifically, the Board has considered M&T Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, and CRA performance. In addition, upon consummation of the proposals, M&T Bank's investments in bank premises would remain within the legal requirements under 12 CFR 208.21.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposals should be, and hereby are, approved.⁷⁶ 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. Approval of these proposals is specifically conditioned on compliance by M&T with all commitments made in connection with these proposals and the conditions set forth in this Order. The commitments and conditions are deemed to be conditions imposed in writing by the Board in connections with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

⁷⁶ Several commenters requested that the Board hold public hearings or meetings on the proposals. The Board's regulations provide for a formal public hearing or informal public meeting 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 represent their views. The Board has considered the commenters' requests in light of all the facts of record. In the Board's view, commenters have had ample opportunity to submit comments on the proposals and, in fact, submitted written comments that the Board has considered in acting on the proposals. The commenters' requests do not identify disputed issues of fact that are material to the Board's decision that would be clarified by a public hearing or meeting. In addition, the requests do not demonstrate why the written comments do not present the commenters' views adequately or why a meeting 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 requests for a public hearing or meeting on the proposals are denied.

In addition, a commenter requested a further extension of the comment period for the proposals. The Board's Rules of Procedure contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. 12 CFR 262.25(b)(2). The commenter's requests for additional time do not identify circumstances that would warrant an extension of the public comment period for these proposals. Accordingly, the Board has determined not to extend further the public comment period.

The proposed transactions 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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors,⁷⁷ effective September 30, 2015.

Margaret McCloskey Shanks (signed)

Margaret McCloskey Shanks
Deputy Secretary of the Board

⁷⁷ Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Appendix

Connecticut Branches to Be Established

1. 100 East Putnam Avenue, Cos Cob, Connecticut
2. 599 Newfield Avenue, Stamford, Connecticut
3. 2 Prospect Street, Ridgefield, Connecticut
4. 837 Post Road, Fairfield, Connecticut
5. 146 Greenwood Avenue, Bethel, Connecticut
6. 247 Federal Road, Brookfield, Connecticut
7. 525 Main Street, Monroe, Connecticut
8. 547 Boston Post Road, Darien, Connecticut
9. 596 Westport Avenue, Norwalk, Connecticut

New Jersey Branches to Be Established

10. West 80 Century Road, Paramus, New Jersey
11. 532 Ocean Avenue, Jersey City, New Jersey
12. 2530 Kennedy Boulevard, Jersey City, New Jersey
13. 7533 Bergenline Avenue, North Bergen, New Jersey
14. 7 East Prospect Street, Waldwick, New Jersey
15. 249 Kinderkamack Road, Oradell, New Jersey
16. 495 Manila Avenue, Jersey City, New Jersey
17. 790 Queen Anne Road, Teaneck, New Jersey
18. 897 Prospect Street, Glen Rock, New Jersey
19. 684 Anderson Avenue, Cliffside Park, New Jersey
20. 304 Essex Street, Lodi, New Jersey
21. 330 Kinderkamack Road, Emerson, New Jersey
22. 731 Brick Boulevard, Brick, New Jersey
23. 887 Allwood Road, Clifton, New Jersey
24. 119 Central Avenue, Westfield, New Jersey
25. 80 Union Avenue #86, Cresskill, New Jersey
26. 62-64 Main Street, Millburn, New Jersey
27. 767 Bloomfield Avenue, West Caldwell, New Jersey
28. 114-116 Kings Highway East, Haddonfield, New Jersey
29. 365 Tucker Avenue, Union, New Jersey
30. 167 East Kennedy Boulevard #169, Lakewood, New Jersey
31. 2335 Church Road, Cherry Hill, New Jersey
32. 379 Ramapo Valley Road, Oakland, New Jersey
33. 57 West Main Street, Ramsey, New Jersey
34. 94 North Maple Avenue, Ridgewood, New Jersey
35. 1070 Main Street, River Edge, New Jersey
36. 1002 Mantua Pike, Woodbury Heights, New Jersey
37. 303 Main Street and Center Avenue, Fort Lee, New Jersey

38. 351 West Main Street, Freehold, New Jersey
39. One Paddock Plaza, West Long Branch, New Jersey
40. 587 Summit Avenue, Jersey City, New Jersey
41. 715 River Road, New Milford, New Jersey
42. 341 Springfield Avenue, Summit, New Jersey
43. 1406 Route 130, Cinnaminson, New Jersey
44. 632 Westwood Avenue, River Vale, New Jersey
45. 128 Center Grove Road, Randolph, New Jersey
46. 45 Outwater Lane, Garfield, New Jersey
47. 10 West Main Street, Denville, New Jersey
48. 355 Applegarth Road, Monroe, New Jersey
49. 216 Passaic Avenue, Kearny, New Jersey
50. 782 Lacey Road, Forked River, New Jersey
51. 35a Marshall Hill Road, West Milford, New Jersey
52. 157 Seventh Avenue, Newark, New Jersey
53. 72 Mt Vernon Place, Newark, New Jersey
54. 187 Eagle Rock Avenue, Roseland, New Jersey
55. 641 Shunpike Road, Chatham, New Jersey
56. 18 James Street, Florham Park, New Jersey
57. 977 Valley Road, Gillette, New Jersey
58. 90 Barclay Center, Route 70, Cherry Hill, New Jersey
59. 55 Brick Boulevard, Brick, New Jersey
60. 2100 Route 70, Manchester, New Jersey
61. 209 Route 206 South, Chester, New Jersey
62. 75 Route 35, Middletown, New Jersey
63. 232 South Livingston Avenue, Livingston, New Jersey
64. 313 Henry Street, Orange, New Jersey
65. 150 Newark Pompton Turnpike, Pequannock, New Jersey
66. 200 Grand Avenue, Hackettstown, New Jersey
67. 261 Godwin Avenue, Wyckoff, New Jersey
68. 340 Main Street, Madison, New Jersey
69. 577 Lakehurst Road, Toms River, New Jersey
70. 288 Main Street, Orange, New Jersey
71. 1965 State Route 57, Hackettstown, New Jersey
72. 50 East Palisade Avenue, Englewood, New Jersey
73. 60 Park Place, Newark, New Jersey
74. 1328 River Avenue, Lakewood, New Jersey
75. 217 Berdan Avenue, Wayne, New Jersey
76. 335 Atlantic City Boulevard, Bayville, New Jersey
77. 240 Baldwin Road, Parsippany, New Jersey
78. 1000 Route 70, Lakewood, New Jersey
79. 277 Eisenhower Parkway, Livingston, New Jersey
80. 408 East Madison Avenue, Dumont, New Jersey

81. 89 Interstate Shopping Center, Ramsey, New Jersey
82. 455 County Road, Marlboro, New Jersey
83. 1018 Washington Street, Hoboken, New Jersey
84. 115 Franklin Turnpike, Mahwah, New Jersey
85. 580 North Main St., Barnegat, New Jersey
86. 601 Route 72 East, Manahawkin, New Jersey
87. 45 South New York Road, Galloway, New Jersey
88. 435 Lewandowski Street, Lyndhurst, New Jersey
89. 108 Lacey Road, Whiting, New Jersey
90. 85 Godwin Avenue, Midland Park, New Jersey
91. 547 Broadway, Bayonne, New Jersey
92. 3495 U.S. Highway 1, Suite 2, Princeton, New Jersey
93. 370 Route 130, East Windsor, New Jersey
94. 2407 State Route 71, Spring Lake, New Jersey
95. 523 Shoppes Boulevard, North Brunswick, New Jersey
96. 1168 Highway 34, Aberdeen, New Jersey
97. 416 South Main Street, Forked River, New Jersey
98. 1620 Route 23 North, Wayne, New Jersey
99. 210 Enterprise Drive, Rockaway, New Jersey
100. 51 Route 22 East, Green Brook, New Jersey
101. 3562 Route 27, Princeton, New Jersey
102. 3897 Route 9, Old Bridge, New Jersey
103. 166 State Route 31, Flemington, New Jersey
104. 779 Franklin Avenue, Franklin Lakes, New Jersey
105. 3 Tree Farm Road, Pennington, New Jersey
106. 889 Fischer Boulevard, Toms River, New Jersey

New York Branches to Be Established

107. 53345 Main Road, Southold, New York
108. 18 East Montauk Highway, Hampton Bays, New York
109. 1591 Richmond Road, Staten Island, New York
110. 2220 Forest Avenue, Staten Island, New York
111. 25 Hill Street, Southampton, New York
112. 1430 Old Country Road, Riverhead, New York
113. 2212 Hylan Boulevard, Staten Island, New York
114. 133 Main Street, Westhampton Beach, New York
115. 320 Mamaroneck Avenue, White Plains, New York
116. 389 Halstead Avenue, Harrison, New York
117. 115 South Ridge Street, Port Chester, New York
118. 228 South Main Street, New City, New York
119. 1019 Park Street, Peekskill, New York
120. 1961 Commerce Street, Yorktown Heights, New York
121. 3031 East Main Street, Mohegan Lake, New York

122. 88 Fourth Street, New Rochelle, New York
123. 302 Somers Commons, Baldwin Place, New York
124. 4106 Hylan Boulevard, Staten Island, New York
125. 248 Main Street, Center Moriches, New York
126. 301 Route 25a, Miller Place, New York
127. 2040 Boston Post Road, Larchmont, New York
128. 74825 Main Road, Greenport, New York
129. 126 North Main Street, East Hampton, New York
130. 300 Mamaroneck Avenue, Mamaroneck, New York
131. 190 Gleneida Avenue, Carmel, New York
132. 2935 Veterans Road West, Suite F, Staten Island, New York
133. 903 Montauk Highway, Bayport, New York
134. 1320 Stony Brook Road, Suite 140, Stony Brook, New York
135. 2102 Montauk Highway, Bridgehampton, New York