

FEDERAL RESERVE SYSTEM

BOK Financial Corporation
Tulsa, Oklahoma

Order Approving the Acquisition of a Bank Holding Company

BOK Financial Corporation (“BOK”), Tulsa, Oklahoma, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to acquire MBT Bancshares, Inc. (“MBT”), and thereby indirectly acquire Missouri Bank and Trust Company of Kansas City (“MBT Bank”), both of Kansas City, Missouri. Following the proposed acquisition, MBT Bank would be merged into BOK’s subsidiary bank, BOKF, National Association (“BOK Bank”), Tulsa, Oklahoma.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 Federal Register 25404 (April 28, 2016)).⁴ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

BOK, with consolidated assets of approximately \$32.1 billion, is the 55th largest insured depository organization in the United States. BOK controls approximately \$20.8 billion in consolidated deposits, which represent less than 1 percent

¹ 12 U.S.C. § 1841 et seq.

² 12 U.S.C. § 1842.

³ The merger of MBT Bank into BOK Bank is subject to the approval of the Office of the Comptroller of the Currency (“OCC”) pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The OCC approved the bank merger on October 19, 2016.

⁴ 12 CFR 262.3(b).

of the total amount of deposits of insured depository institutions in the United States.⁵ BOK controls BOK Bank, which operates in Arkansas, Arizona, Colorado, Kansas, Maryland, Missouri, New Mexico, Oklahoma, and Texas. BOK Bank is the 303rd largest insured depository institution in Missouri, controlling deposits of approximately \$1.3 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁶ BOK Bank is the 34th largest insured depository institution in Kansas, controlling deposits of approximately \$419.3 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

MBT, with consolidated assets of approximately \$601.9 million, is the 1,203rd largest insured depository organization in the United States. MBT controls approximately \$555.6 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. MBT controls MBT Bank, which operates in Missouri and Kansas. MBT Bank is the 52nd largest insured depository institution in Missouri, controlling deposits of approximately \$407.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. MBT Bank is the 101st largest insured depository institution in Kansas, controlling deposits of approximately \$128.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, BOK would become the 54th largest depository organization in the United States, with consolidated assets of approximately \$32.7 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. BOK would control consolidated deposits of approximately \$21.4 billion, which represent less than 1 percent of the total amount of

⁵ Asset data are as of June 30, 2016, and deposit data are as of June 30, 2015, unless otherwise noted.

⁶ In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

deposits of insured depository organizations in the United States. In Missouri, BOK Bank would become the 52nd largest depository institution, controlling deposits of approximately \$409.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Kansas, BOK Bank would become the 26th largest depository institution, controlling deposits of approximately \$547.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

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

⁷ 12 U.S.C. § 1842(d)(1)(A).

⁸ 12 U.S.C. § 1842(d)(1)(B).

⁹ 12 U.S.C. § 1842(d)(2)(A) and (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be

For purposes of the BHC Act, the home state of BOK is Oklahoma, and MBT Bank's home state is Missouri.¹⁰ MBT Bank also operates in Kansas. BOK is well capitalized and well managed under applicable law, and BOK Bank has an "Outstanding" Community Reinvestment Act ("CRA")¹¹ rating. Missouri and Kansas have five-year minimum age requirements, and MBT Bank has been in existence for more than five years.¹²

On consummation of the proposed transaction, BOK would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, the combined organization would control less than 30 percent of the total amount of deposits of insured depository institutions in Missouri and Kansas, the only states in which BOK and MBT have overlapping banking operations. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.¹³ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are

located in the states in which the bank is chartered or headquartered or operates a branch. See 12 U.S.C. § 1841(o)(4)–(7).

¹⁰ See 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank's home state is the state in which the bank is chartered.

¹¹ 12 U.S.C. § 2901 et seq.

¹² See RSMo § 362.077(1); K.S.A. 9-541(a).

¹³ 12 U.S.C. § 1842(c)(1).

clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁴

BOK and MBT have subsidiary depository institutions that compete directly in the Kansas City, Missouri, banking market (“Kansas City market”).¹⁵ The Board has considered the competitive effects of the proposal in the banking market. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative share of total deposits in insured depository institutions in the market (“market deposits”) that BOK would control;¹⁶ 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”);¹⁷ and other characteristics of the market.

¹⁴ 12 U.S.C. § 1842(c)(1)(B).

¹⁵ The Kansas City market is defined as Cass, Clay, Jackson, Lafayette, Platte, and Ray counties, all of Missouri, and Franklin, Johnson, Leavenworth, Miami, Wyandotte, and Linn (excluding the towns of Blue Mound and Prescott) counties, all of Kansas. The market also includes select towns in Clinton, Johnson, and Bates counties, all of Missouri.

¹⁶ Local deposit and market share data are as of June 30, 2015, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

¹⁷ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Kansas City market. On consummation of the proposal, the Kansas City market would remain unconcentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in this market would be small, and numerous competitors would remain in the banking market.¹⁸

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

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Kansas City market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the

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.

¹⁸ BOK operates the 22nd largest depository institution in the Kansas City market, controlling approximately \$420.6 million in deposits, which represent 0.9 percent of market deposits. MBT operates the 16th largest depository institution in the same market, controlling deposits of approximately \$536.4 million, which represent about 1.2 percent of market deposits. On consummation of the proposed transaction, BOK would become the 10th largest depository organization in the market, controlling deposits of approximately \$957.0 million, which represent approximately 2.1 percent of market deposits. The HHI for the Kansas City market would increase by 2 points to 798, and 117 competitors would remain in the market.

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

BOK and MBT are both well capitalized, and the combined entity would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company acquisition that is structured as an exchange of shares for cash, with a subsequent merger of the subsidiary depository institutions.¹⁹ The asset quality, earnings, and liquidity of BOK Bank and MBT Bank are consistent with approval, and BOK appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has

¹⁹ To effect the transaction, each share of MBT common stock would be converted into a right to receive cash, based on an exchange ratio. Following the acquisition of 100 percent of the MBT shares, BOK will cause MBT to dissolve and MBT Bank to merge with and into BOK Bank, with BOK Bank as the surviving entity. BOK has the financial resources to fund the transaction.

reviewed the examination records of BOK, MBT, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by BOK; the Board's supervisory experiences with BOK and MBT and those of other relevant bank supervisory agencies with the organizations; and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

BOK, MBT, and their subsidiary depository institutions are each considered to be well managed. BOK has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. BOK's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and its risk-management program appears consistent with approval of this expansionary proposal.²⁰

The Board also has considered BOK's plans for implementing the proposal. BOK has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. BOK would implement its risk-management policies, procedures, and controls at the

²⁰ On September 9, 2016, the Securities and Exchange Commission ("SEC") announced that it had settled charges against BOK regarding allegations that BOK Bank's Corporate Trust Department, primarily through a senior executive, concealed problems and red flags from investors in certain bond offerings for which BOK Bank served as indenture trustee and dissemination agent between 2007 and 2015. See BOK Bank, SEC Order Instituting Cease-and-Desist Proceedings, File No. 3-17533 (September 9, 2016) (the "Order"). According to the announcement, BOK promptly terminated the responsible employee following an internal investigation and reported the matter to the SEC. Further, the Order notes that BOK has cooperated with the SEC in the investigation and has promptly undertaken a number of remedial acts to improve controls within BOK Bank's Corporate Trust Department. The Board has consulted with the OCC, the bank's primary federal supervisor, regarding this matter. The OCC considered the matter in connection with its review of the proposed merger of MBT Bank into BOK Bank, and determined that the proposed merger will not impede BOK Bank's remediation efforts.

combined organization, and these are considered acceptable from a supervisory perspective. In addition, BOK's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and BOK plans to integrate MBT's existing management and personnel in a manner that augments BOK's management.²¹

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

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²² In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA. 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

²¹ On consummation, ten individuals currently serving as senior management officials at MBT or MBT Bank will serve as senior management officials at BOK Bank, including MBT Bank's chief executive officer, who will be retained as BOK Bank's Chairman of the Kansas City market.

²² 12 U.S.C. § 1842(c)(2).

sound operation,²³ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²⁴

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

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of BOK Bank and MBT Bank; the fair lending and compliance records of both banks; the supervisory views of the OCC and the Consumer Financial Protection Bureau ("CFPB"); confidential supervisory information; information provided by BOK; and the public comment received on the proposal.

Public Comment Regarding the Proposal

In this case, a commenter objected to the proposal on the basis of alleged disparities in the number of residential real estate loans made to minority borrowers, as compared to white borrowers, by BOK Bank in the Kansas City, Missouri-Kansas, Metropolitan Statistical Area ("Kansas City MSA"); the Houston, Texas, MSA ("Houston MSA"); and the Phoenix, Arizona, MSA ("Phoenix MSA"), as reflected in

²³ 12 U.S.C. § 2901(b).

²⁴ 12 U.S.C. § 2903.

data reported under the Home Mortgage Disclosure Act (“HMDA”) for 2014.²⁵ The commenter further alleged that BOK Bank confined African American and Hispanic borrowers to government loan programs instead of conventional loan products in the Kansas City MSA. Also, the commenter criticized the rate at which BOK Bank denied applications by African Americans and/or Hispanics, compared to the rate of denials for whites, for home refinance loans in the Houston and Phoenix MSAs, as reported under HMDA for 2014. In addition, the commenter generally alleged that BOK Bank has a weak record of lending to people of color and low-income individuals and a weak record of consumer compliance.²⁶

Businesses of the Involved Institutions and Response to the Comment

BOK, through BOK Bank and its nonbanking subsidiaries, provides a broad range of financial products and services to consumers and businesses. Through several geographic banking divisions, BOK serves customers in Arizona, Arkansas, Colorado, Kansas, Maryland, Missouri, New Mexico, Oklahoma, and Texas. Products and services provided by BOK include a variety of loan and deposit products; cash management services; fiduciary services; commercial risk-management products; mortgage banking; brokerage and trading services to middle-market businesses, financial institutions, and consumers; and investment advisory services.

MBT Bank offers a broad range of consumer and commercial banking products and services through four locations in the Kansas City MSA. Its products and services include checking, savings, money market, and certificate of deposit accounts;

²⁵ The commenter’s concerns focused on the number of home purchase loans that BOK Bank offered to African Americans and Hispanics compared to whites in the Kansas City MSA, the number of home refinance loans that BOK Bank offered to African Americans compared to whites in the Houston MSA, and the number of home refinance loans offered to African Americans and Hispanics compared to whites in the Phoenix MSA.

²⁶ The commenter also cited an anonymous customer complaint posted to a public online forum in 2010 regarding alleged problems the customer had closing an account at BOK Bank and overdraft fees charged by the bank on the account. The OCC reviewed the comment as part of its review of BOK Bank’s Bank Merger Act application but could not verify the customer complaint due to the lack of information contained in the posting.

mortgage and other consumer lending products; business services and lending; and international banking services.

In response to the comment, BOK represents that BOK Bank has maintained an excellent record of providing financial services to minority and LMI individuals, is strongly committed to complying with fair lending laws, and actively engages in monitoring, testing, and maintaining internal controls to ensure compliance with such laws. BOK notes that its presence in the Kansas City, Houston, and Phoenix MSAs is limited; however, BOK asserts that its management is committed to ensuring fair lending in all markets and is deploying strategies to increase its lending to minorities and in LMI communities.

With respect to BOK Bank's lending in the Kansas City MSA, BOK represents that BOK Bank outpaced "aggregate peer" performance in home-purchase-application rates and origination rates for African American and Hispanic borrowers, as reflected in 2014 HMDA data, and that BOK Bank's denial rates to such borrowers were comparable to those of its peers. BOK also asserts that no disparities were revealed through its analyses to indicate that African American or Hispanic borrowers were steered by BOK Bank to government loan programs instead of conventional loan products, as alleged by the commenter.

In the Houston MSA, BOK acknowledges that the bank lagged behind peers in percentage of total refinance applications received from African Americans in 2014; however, BOK represents that the bank exceeded the aggregate peer threshold with respect to application rates from Hispanic borrowers. BOK also represents that home-purchase loan origination rates were higher than the aggregate peer data in all demographic categories. Regarding the Phoenix MSA, BOK represents that BOK Bank outperformed aggregate peer data in terms of the percentage of home refinance loans originated to African American and Hispanic borrowers, compared to applications received from such borrowers in 2014. BOK also represents that it originated home purchase loans to African Americans and Hispanics at a higher rate than the peer average. Regarding the allegations of high denial rates for refinance loan applications in the

Houston and Phoenix MSAs in 2014, BOK represents that its decisions with respect to the applications received reflected judgments based on credit history, collateral, debt-to-income ratios, and other nondiscriminatory factors.²⁷

In each of the Kansas City, Houston, and Phoenix MSAs, BOK represents that BOK Bank engages in a number of outreach activities targeted to minority individuals and communities. For example, in the Kansas City MSA, BOK represents that BOK Bank's employees provide financial literacy classes to Spanish speakers and work with organizations that promote the development and financing of homes in LMI areas and with organizations that provide scholarships to minority students. BOK also represents that it expects additional opportunities to arise in the Kansas City MSA following the proposed transaction due to the increased resource capacity of BOK Bank and the proximity of MBT Bank's branches to LMI and minority communities. In the Phoenix MSA, BOK represents that BOK Bank sponsors and/or provides community service to several community organizations focused on supporting minority communities. In the Houston MSA, BOK asserts that it has appointed an employee as Hispanic Market Coordinator to facilitate identifying and meeting the financial service needs of the Hispanic community, and its employees also provide community service to a number of organizations that serve minority communities.

BOK represents that it is implementing a strategy to expand the bank's lending to minorities and LMI individuals. The strategy includes setting minority and LMI lending goals in all full-scope assessment areas and the targeting of resources to areas that do not meet the goals; hiring and deploying LMI loan officers in various markets;²⁸ developing an enterprise-wide marketing strategy to target LMI communities;

²⁷ BOK represents that denial rates for white, African American, and Hispanic refinance applicants were all above aggregate peer denial rates in the Houston and Phoenix markets, which BOK argues indicates a consistent underwriting program regardless of race.

²⁸ BOK represents that it deploys LMI loan officers in various markets to assist LMI and minority individuals in obtaining mortgage financing and to conduct outreach in targeted

hiring an LMI/CRA Program Manager within the mortgage division to facilitate lending initiatives that benefit LMI and minority borrowers; and creating a Community Development Advisory Committee in major markets.

BOK also represents that BOK Bank offers an extensive suite of residential lending products that benefit LMI individuals and geographies across all markets of the bank. Such products include low-down-payment products, government-sponsored loan programs, down-payment assistance programs, and loan modifications. BOK represents that BOK Bank has deployed marketing strategies to target its products to LMI and minority communities through search engine, direct mail, and e-mail marketing efforts.

Further, BOK asserts that it has policies and procedures to ensure compliance with fair lending laws and to monitor fair lending risk, including an enterprise-wide fair lending risk assessment, which is updated quarterly; ongoing HMDA and fair lending monitoring and testing; comparative analysis to identify specific loans that may exhibit heightened fair lending risk; escalation and reporting of fair lending results to senior management; regular monitoring of customer complaints for potential fair lending concerns; and a third-party due diligence program that evaluates third-party service providers that may present fair lending risk.

Records of Performance Under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the applicant's response to comments. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as

communities. The loan officers also have a specific compensation plan that encourages LMI lending. BOK represents that BOK Bank has employed an LMI loan officer in the Kansas City market and is in the process of hiring such loan officers to serve the Phoenix and Houston MSAs.

information and views provided by the appropriate federal supervisors.²⁹ In this case, the Board considered the supervisory views of and information provided by the OCC.

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.³⁰ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under HMDA, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution of the institution's lending in its assessment areas and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of

²⁹ See Interagency Questions and Answers Regarding Community Reinvestment, 81 Federal Register 48506, 48548 (July 25, 2016).

³⁰ 12 U.S.C. § 2906.

loans to low-, moderate-, middle-, and upper-income individuals;³¹ (4) the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.³² Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of BOK Bank

BOK Bank was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the OCC, as of October 28, 2013 ("BOK Bank Evaluation").³³ The bank received "Outstanding" ratings for both the Lending Test and

³¹ 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).

³² 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.

³³ The BOK Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home purchase, home improvement, and home refinance mortgage loans reported, pursuant to HMDA, and small business loans reported under CRA data collection requirements for 2011 and 2012, except for loans in Maryland and Oklahoma, where review periods were January 26, 2009, through December 31, 2012, and January 1, 2009, through December 31, 2012, respectively. The evaluation period start date for community development lending, investments, and

the Investment Test and a “High Satisfactory” rating for the Service Test.³⁴ The Board has consulted with the OCC regarding the BOK Bank Evaluation.

Examiners found that BOK Bank’s overall lending activity was good. Examiners noted that the bank’s community development lending was exceptionally strong and positively impacted the Lending Test in all rating areas. According to examiners, the bank’s community development loans primarily supported affordable housing initiatives, activities that promoted economic development in the assessment areas, and activities that revitalized or stabilized LMI census tracts. Examiners also found that the bank originated a substantial majority of loans inside of its assessment areas. Overall, examiners found that geographic distribution of the bank’s loans was

services was January 1, 2011, for all areas except Oklahoma and Maryland, which had start dates of September 21, 2009, and February 26, 2009, respectively. The evaluation period end date for community development lending, investments, and services in all rating areas was October 28, 2013.

³⁴ The BOK Bank Evaluation included full-scope evaluations of the Kansas City, Multi-State MSA (composed of Johnson and Wyandotte counties in Kansas and Jackson County, Missouri); the Phoenix, Arizona, MSA (composed of Maricopa County); the Fayetteville, Arkansas, MSA (composed of Benton and Washington counties); the Denver, Colorado, MSA (composed of Adams, Arapahoe, Broomfield, Denver, Douglas, and Jefferson counties); the Albuquerque, New Mexico, MSA; the Oklahoma City, Oklahoma, MSA (composed of Canadian, Cleveland, and Oklahoma counties); the Tulsa, Oklahoma, MSA (composed of Creek, Rogers, Tulsa and Wagoner counties); the Howard County, Maryland, MSA; the Dallas, Texas, MSA (composed of Collin, Dallas, and Denton counties); the Fort-Worth, Texas, MSA (composed of Tarrant County); and the Houston, Texas, MSA (composed of Fort Bend and Harris counties). Limited scope evaluations were performed in the Bartlesville, Oklahoma, Non-MSA (composed of Washington County); the Enid, Oklahoma, Non-MSA (composed of Garfield County); the Eufaula, Oklahoma, Non-MSA (composed of McIntosh County); the Grove, Oklahoma, Non-MSA (composed of Delaware County); the McAlester, Oklahoma, Non-MSA (composed of Pittsburg County); the Muskogee, Oklahoma, Non-MSA (composed of Muskogee County); the Ponca City, Oklahoma, Non-MSA (composed of Kay County); the Stillwater, Oklahoma, Non-MSA (composed of Payne County); the Boulder, Colorado, MSA; the Santa Fe, New Mexico, MSA; and the Sherman-Dennison, Texas, MSA.

adequate and borrower-income distribution was good, as evidenced by good distribution of home mortgage loans by borrower-income level.

In the Kansas City MSA, an area of concern for the commenter and the area affected by the proposed transaction, examiners found BOK Bank's lending activity to be excellent. Examiners found that geographic distribution of the bank's loans was adequate and that overall borrower-income distribution was excellent in the Kansas City MSA.

In both the Phoenix and Houston MSAs, the other areas of concern for the commenter, examiners found overall lending activity and borrower-income distribution to be adequate. Examiners found geographic distribution of loans to be very poor in the Phoenix MSA and poor in the Houston MSA; however, community development lending in both MSAs was found to be exceptionally strong and beneficial to the communities, including LMI areas and individuals. Further, examiners analyzed the bank's home mortgage and small business lending activity over the evaluation period in the bank's Arizona and Texas assessment areas to identify any gaps in the geographic distribution of loans; no unexplained gaps were found in these areas.

Examiners found that BOK Bank's overall investment performance was excellent, and they noted that the bank's investments primarily supported affordable housing, community services, and economic development in its assessment areas. Examiners also noted that the bank's investments were responsive to the identified needs in the communities served by the bank. Further, examiners found that BOK Bank's delivery systems were accessible to all portions of the bank's assessment areas, including LMI communities.³⁵ Examiners also found that the bank provided an overall adequate level of community development services in its assessment areas.

³⁵ Examiners found the bank's branch distribution in the Kansas City MSA to be adequate and found its branch distribution in the Phoenix MSA to be good when considering its limited presence in each MSA. The examiners also noted that the branches were accessible to geographies and individuals of different income levels in both assessment areas. In the Houston MSA, examiners found the bank's branch distribution to be adequate and reasonably accessible to geographies and individuals of different income levels.

BOK Bank's Efforts Since the BOK Bank Evaluation

BOK represents that BOK Bank has continued to demonstrate responsiveness to credit needs in the bank's assessment areas. BOK asserts that BOK Bank has remained active in marketing a wide selection of products and services within its assessment areas, including products and services that benefit LMI and minority communities. BOK also represents that the bank has made a number of community development loans and investments to support affordable housing and small businesses in its assessment areas. BOK notes that the bank has engaged in various outreach efforts and community service opportunities with organizations that serve LMI persons and communities, including organizations that focus on financial education, economic development, and small business development.

BOK represents that BOK Bank continues to develop its CRA program and evaluate CRA performance to determine if there are opportunities for improvement, including through the recent creation of a CRA Committee, which meets quarterly and has senior management participation. BOK represents that the CRA Committee reviews the bank's CRA performance levels and underlying CRA and HMDA data quality and integrity; communicates with key stakeholders; assesses the risk and impact of CRA and HMDA performance levels; and facilitates CRA planning and resources. BOK represents that the CRA Committee will also identify trends and propose recommended changes to strategic initiatives; identify compliance risks; and evaluate results of initiatives, business plans, models, and strategies.

CRA Performance of MBT Bank

MBT Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of July 29, 2013 ("MBT Bank Evaluation").³⁶ The bank received "Satisfactory" ratings for both the Lending Test and Community Development Test.

³⁶ The MBT Bank Evaluation was conducted using Small Institution CRA Examination Procedures. Examiners reviewed the bank's lending activity based on the institution's

Examiners concluded that the bank demonstrated a satisfactory commitment to community reinvestment. Examiners noted that a substantial majority of the bank's small business and home mortgage loans were originated within the bank's assessment area, which reflected an excellent commitment to meeting the credit needs of its assessment area. Examiners also found that the geographic distribution of the bank's loans reflected a reasonable dispersion throughout its assessment area and that the bank's loan-to-deposit ratio reflected a reasonable willingness to provide credit, given the bank's size, financial condition, and the credit needs of its assessment area. Examiners found that the bank's distribution of loans to borrowers of different incomes and businesses of different sizes was poor. However, examiners noted that MBT has a business focus, and MBT management indicated that there was substantial competition for small business loans to financially strong moderate-sized businesses in the assessment area.

Examiners also found that the bank's overall performance in community development activities in its assessment area was reasonable. Examiners concluded that the bank's community development performance demonstrated adequate responsiveness to the community development needs in its assessment area through community development loans, qualified investments, and community development services.

Views of the OCC

The Board has consulted with the OCC, the primary federal supervisor of BOK Bank, regarding the OCC's review of the proposed merger of BOK Bank and MBT Bank. The OCC conducted a review of the same comment that was submitted to the Board, taking into consideration BOK Bank's CRA, consumer compliance, and fair lending records.³⁷

loan trial report and HMDA data for 2011 and 2012. The MBT Bank Evaluation reviewed the bank's Kansas City MSA, which included Johnson and Wyandotte Counties in Kansas and Clay, Jackson, and Platte Counties in Missouri.

³⁷ The OCC's review did not result in findings related to fair lending that would warrant denial of the bank merger application; however, it will continue to monitor BOK Bank for fair lending issues as part of its ongoing supervisory process. See Letter from

The Board consulted with the OCC regarding BOK Bank's record of compliance with fair lending laws and regulations and the bank's policies and procedures relating to fair lending and other consumer protection laws and regulations. BOK Bank intends to implement its consumer compliance policies and procedures at the combined organization following consummation of the transaction.

After a full review of the proposal, the OCC determined that the proposal met the standards of the Bank Merger Act and approved the proposal without conditions.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. BOK represents that upon consummation of the proposal, existing customers of MBT would have access to a more expansive line of consumer products and services, including additional lending products that are beneficial to LMI borrowers. Specifically, BOK represents that it participates in several government-sponsored lending programs, partners with numerous entities to provide down-payment assistance programs and financial support for affordable housing, and offers second-chance checking accounts to customers.

BOK represents that the acquisition will make available expanded resources to the communities currently served by MBT. For example, BOK represents that MBT has applied limited resources to consumer lending to date and that the acquisition would result in additional mortgage lenders serving MBT's communities. Further, BOK represents that it intends to increase current levels of community development activity – both financially and through employee service – from the levels MBT and BOK engaged in as individual entities in the affected market. Moreover, BOK represents that customers of both institutions would benefit from a more expansive branch network. BOK has asserted that it has no plans to close or consolidate existing branches of either depository institution following consummation of the proposed

Stephen A. Lybarger, Deputy Comptroller for Licensing, OCC, to Tamara Wagman, Frederic Dorwart Lawyers (October 19, 2016).

transaction and that branches acquired as a result of the proposed transaction will allow for greater opportunities to serve LMI and minority consumers. Further, BOK represents that MBT customers will have access to a range of options for obtaining financial services, including a 24-hour “ExpressBank” customer phone service and online and mobile banking options.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions’ records of compliance with fair lending and other consumer protection laws, consultations with the OCC and CFPB, confidential supervisory information, information provided by BOK, the public comment on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended section 3 of the BHC Act to require the Board to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.”³⁸

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

³⁸ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601 (2010), codified at 12 U.S.C. § 1842(c)(7).

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.³⁹ 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.⁴⁰

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves the acquisition of approximately \$601.9 million in total assets. After consummation, BOK would have approximately \$32.7 billion in consolidated assets and would not be likely to pose systemic risks. The Board generally presumes that a proposal that involves an acquisition of less than \$2 billion in assets will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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

³⁹ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

⁴⁰ For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order 2012-2 (February 14, 2012).

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.⁴¹ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by BOK with all the conditions imposed in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the proposal. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this Order or later than three months thereafter, unless such

⁴¹ The commenter requested that the Board hold public hearings or meetings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 U.S.C. § 1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. 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 commenter's request in light of all the facts of record. In the Board's view, the commenter has 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 did not identify disputed issues of fact material to the Board's decision and that would be clarified by a public meeting. In addition, the request did not demonstrate why written comments do not present the commenter's views adequately or why a hearing or 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 or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

period is extended for good cause by the Board or the Federal Reserve Bank of Kansas City, acting under delegated authority.

By order of the Board of Governors,⁴² effective November 15, 2016.

Margaret McCloskey Shanks (signed)

Margaret McCloskey Shanks
Deputy Secretary of the Board

⁴² Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.