

FEDERAL RESERVE SYSTEM

F.N.B. Corporation
Pittsburgh, Pennsylvania

Order Approving the Merger of Bank Holding Companies

F.N.B. Corporation (“FNB”), Pittsburgh, Pennsylvania, 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 merge with Yadkin Financial Corporation (“Yadkin”), Raleigh, and thereby indirectly acquire Yadkin Bank, Statesville, both of North Carolina. Following the proposed acquisition, Yadkin Bank would be merged into FNB’s subsidiary bank, First National Bank of Pennsylvania (“First National Bank”), Greenville, Pennsylvania.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 Federal Register 65358 (September 22, 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.

FNB, with consolidated assets of approximately \$21.6 billion, is the 75th largest insured depository organization in the United States, controlling approximately \$16.0 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 Yadkin Bank into First National 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).

⁴ 12 CFR 262.3(b).

of the total amount of deposits of insured depository institutions in the United States.⁵ FNB controls First National Bank, which operates in Maryland, Ohio, Pennsylvania, and West Virginia.

Yadkin, with consolidated assets of approximately \$7.4 billion, is the 166th largest insured depository organization in the United States, controlling approximately \$5.3 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Yadkin controls Yadkin Bank, which operates in North Carolina and South Carolina.

On consummation of this proposal, FNB would become the 62nd largest insured depository organization in the United States, with consolidated assets of approximately \$28.9 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. FNB would control consolidated deposits of approximately \$21.3 billion, which represent less than 1 percent of the total deposits of insured depository institutions in the United States.

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.⁶ 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.⁷ 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

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

⁶ 12 U.S.C. § 1842(d)(1)(A).

⁷ 12 U.S.C. § 1842(d)(1)(B).

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 any state in which the acquirer and target have overlapping banking operations.⁸

For purposes of the BHC Act, the home state of FNB is Pennsylvania, and the home state of Yadkin Bank is North Carolina.⁹ Yadkin Bank also is located in South Carolina. FNB is well capitalized and well managed under applicable law, and First National Bank has a “Satisfactory” rating under the Community Reinvestment Act of 1977 (“CRA”).¹⁰ North Carolina does not have a minimum age requirement,¹¹ and South Carolina does not have a minimum age requirement applicable to this transaction.¹² Yadkin Bank has been in existence for more than five years.

On consummation of the proposed transaction, FNB would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. The Board has considered all other requirements under section 3(d) of the BHC Act, including FNB’s record of meeting the credit needs of the

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

⁹ 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 by which the bank is chartered.

¹⁰ 12 U.S.C. § 2901 et seq.

¹¹ See N.C. Gen. Stat. ch. 53C.

¹² South Carolina law imposes a minimum age requirement only on the acquisition of a bank, or the acquisition of all or substantially all the branches of a bank, that is organized under the laws of South Carolina or that maintains its principal place of business in South Carolina. See S.C. Code Ann. §§ 34-25-50 and 34-25-240. This age requirement is not applicable to the proposed transaction because Yadkin Bank is organized under the laws of North Carolina.

communities it serves. 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. 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 Board finds that the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.¹³

FNB and Yadkin do not directly compete in any retail banking market. Based on all 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 any relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.¹⁴

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of the financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, and earnings

¹³ 12 U.S.C. § 1842(c)(1).

¹⁴ The Department of Justice 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.

performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

FNB and First National Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange.¹⁵ The asset quality, earnings, and liquidity of both First National Bank and Yadkin Bank are consistent with approval, and FNB appears to have adequate resources to absorb the costs of the proposal and to complete the 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 reviewed the examination records of FNB, Yadkin, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by FNB, the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

¹⁵ At the time of the merger, each share of Yadkin voting common stock would be converted into a right to receive FNB common stock based on an exchange ratio. Each share of Yadkin nonvoting common stock would be converted into a right to receive either FNB common stock, based on an exchange ratio, or cash. FNB has the financial resources to effect the transaction.

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

The Board also has considered FNB's plans for implementing the proposal. FNB has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address all aspects of the post-integration process for this proposal. FNB would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, FNB's and Yadkin's management have the experience and resources to operate the combined organization in a safe and sound manner, and FNB plans to integrate Yadkin's existing management and personnel in a manner that augments FNB's management.¹⁶

Based on all the facts of record, including FNB's supervisory record, managerial and operational resources, plans for operating the combined institution after consummation, and public comments on the proposal,¹⁷ the Board concludes that

¹⁶ FNB will increase the size of its board by one director, who will be appointed from Yadkin's board. In addition, FNB will invite six members of the board of directors of Yadkin to serve for a minimum of one year as members of FNB's newly established North Carolina Community Advisory Board.

¹⁷ A commenter criticized the portions of transaction-account revenues generated by overdraft fees at First National Bank and Yadkin Bank, based on data reported for 2015. The levels of overdraft-fee revenues at First National Bank and Yadkin Bank do not raise safety and soundness concerns. Commenters also criticized the sequencing of credit and debit transactions implemented by First National Bank and criticized the number of overdraft item fees that First National Bank could charge in a single day pursuant to its account terms and conditions. FNB contends that its noninterest charges, including the sequencing of transactions, are in compliance with applicable regulations of the OCC. See 12 CFR 7.4002. The Board has consulted with the OCC and has considered the

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 FNB and Yadkin 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.¹⁸ 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 sound operation,¹⁹ 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.²⁰

In addition, the Board considers the banks' overall compliance record and their 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,

supervisory histories of the involved institutions and the firms' records of compliance in considering this case.

¹⁸ 12 U.S.C. § 1842(c)(2).

¹⁹ 12 U.S.C. § 2901(b).

²⁰ 12 U.S.C. § 2903.

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 First National Bank and Yadkin Bank, the fair lending and compliance records of both banks, the supervisory views of the OCC, confidential supervisory information, information provided by FNB, and the public comments received on the proposal.

Summary of Public Comments on Convenience and Needs

The Board received comments from 16 commenters supporting the proposal. Commenters described favorable experiences with the community investment and service programs of FNB. Several commenters commended the bank for its support of programs that provide services to LMI and other historically underserved communities. One commenter praised the speed at which FNB creates a positive impact in geographies that are new to the organization. Another commenter contended that the proposal will encourage economic development, job creation, and wealth generation in Cleveland, Ohio, and in surrounding communities.

The Board also received comments from four commenters expressing concerns about the proposal, alleging that FNB and Yadkin neglect LMI and minority communities. Three commenters allege, on the basis of data for 2015 reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),²¹ that FNB made a disproportionately low number of loans to LMI and minority borrowers, criticizing First National Bank's record of lending to minorities in the Allegheny County, Pennsylvania; Akron, Ohio; Anne Arundel County, Maryland; Baltimore, Maryland; Cleveland, Ohio; and Summit County, Ohio, areas. One commenter alleges that First National Bank has

²¹ 12 U.S.C. § 2801 et seq.

engaged in “redlining” in the Baltimore area.²² Three commenters allege that FNB denied a disproportionately high number of loans to LMI and minority borrowers, based on 2015 HMDA data. Commenters expressed particular concern regarding denial rates for minority loan applicants in the Allegheny County, Baltimore, and Cleveland areas. One commenter alleges that FNB had an average to below-average record of small business lending in LMI areas, and two commenters criticized FNB’s record of small business lending in Allegheny County. In addition, one commenter criticized Yadkin Bank’s level of lending to minority borrowers in Mecklenburg County, North Carolina, based on 2015 HMDA data. One commenter criticized First National Bank’s community development lending and investment performance, alleging that the bank’s performance underperformed that of Yadkin Bank.

Commenters also expressed concerns regarding the future CRA performance of the combined bank. Several commenters argue that FNB should be required to work with community groups to create a community reinvestment plan and urged the Board to approve the application on the condition that FNB develop and successfully implement such a plan.

Businesses of the Involved Institutions and Response to Comments

FNB and First National Bank assert that they provide a range of financial products and services to individual customers and businesses. Through its branch network in Maryland, Ohio, Pennsylvania, and West Virginia, First National Bank states that it offers banking products and services to its customers, including deposits, safe deposit facilities, electronic banking services, money transfer services, secured and unsecured loans, and trust and fiduciary services. FNB also explains that it offers

²² Redlining is the practice of providing unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristics of the residents of the area in which a credit seeker resides or will reside or in which a property to be mortgaged is located. Office of the Comptroller of the Currency et al., Interagency Fair Lending Examination Procedures (August 2009), <https://www.ffiec.gov/pdf/fairlend.pdf>.

services through nonbank subsidiaries, including a consumer-finance company, an insurance agency, a leasing company, and a wealth-management affiliate.

FNB represents that Yadkin and Yadkin Bank also offer a range of financial products and services to individual customers and businesses, including business and consumer loans, commercial cash management services, and consumer deposit products.

In response to the commenters' allegations, FNB states that it maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations. For example, First National Bank monitors and reviews its loan policies and practices for the purpose of measuring its compliance with fair lending laws and equal credit opportunity requirements. FNB states that it will ensure that the level of community involvement historically performed by Yadkin will continue uninterrupted and contends that this level will be elevated when backed by the resources of the combined organization. FNB intends to maintain Yadkin's community development team at the combined organization and has hired a new Community Development Officer, whose primary objective will be to continue to execute FNB's community benefits plan.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.²³

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

²³ See *Interagency Questions and Answers Regarding Community Reinvestment*, 81 Fed. Reg. 48506, 48548 (July 25, 2016).

meet the credit needs of its entire community, including LMI neighborhoods.²⁴ 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 company's lending, 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; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amount of loans to low-, moderate-, middle-, and upper-income individuals;²⁵ (4) the institution's

²⁴ 12 U.S.C. § 2906.

²⁵ 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).

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.²⁶ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of First National Bank

First National Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of August 10, 2015 ("First National Bank Evaluation").²⁷ First National Bank received a "High Satisfactory" rating

²⁶ Other data relevant to credit decisions could include credit histories, 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.

²⁷ The First National Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed home mortgage and small business loan lending from January 1, 2010, through December 31, 2014, except for community development loans, which were evaluated from January 22, 2011, through December 31, 2014. The evaluation period for the Investment Test and the Service Test was from January 22, 2011, through December 31, 2014. The First National Bank Evaluation included a full-scope review of the bank's assessment areas within the following areas: the Pittsburgh, Pennsylvania, Metropolitan Statistical Area ("Pittsburgh assessment area"); the Cleveland–Elyria, Ohio, Metropolitan Statistical Area ("Cleveland assessment area"); the Baltimore–Columbia–Towson, Maryland, Metropolitan Statistical Area ("Baltimore assessment area"); the Weirton–Steubenville, West Virginia–Ohio, Metropolitan Statistical Area ("MSA"); the Youngstown–Warren–Boardman, Ohio–Pennsylvania, MSA; and the bank's assessment area in non-MSA areas of Pennsylvania. A limited-scope review was conducted in 11 other assessment areas in Ohio and Pennsylvania.

for the Lending Test, a “Low Satisfactory” rating for the Investment Test, and a “High Satisfactory” rating for the Service Test.

Examiners found that First National Bank’s overall lending levels reflected excellent responsiveness to community credit needs. According to examiners, the bank’s geographic distribution of loans reflected good penetration throughout many of the bank’s assessment areas. Examiners also found that the bank’s distribution of borrowers reflected good penetration among borrowers of different income levels and among business and farm customers of different sizes, given the product lines offered by the institution.

In Pennsylvania,²⁸ an area of concern for commenters, examiners noted that First National Bank exhibited a good record of serving the credit needs of the most economically disadvantaged areas of its assessment areas, low-income individuals, and very small businesses, consistent with safe and sound banking practices. Examiners found that First National Bank used flexible lending practices in order to serve assessment area credit needs, including single-family mortgage loan programs that serve eligible LMI borrowers.²⁹ These programs provided reduced down-payment requirements, “zero point” fixed interest rates, flexible loan-to-value limits, and reduced closing costs. Examiners noted that the bank made a relatively high level of community development loans in Pennsylvania during the review period.

In Ohio,³⁰ another area of concern for commenters, examiners found that First National Bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas of its assessment areas, low-income individuals, and

²⁸ First National Bank’s performance in Pennsylvania had the greatest impact on the bank’s CRA performance due to a higher concentration of deposits and lending than in other areas.

²⁹ A commenter alleges that FNB rarely originates Federal Housing Administration (“FHA”) loans.

³⁰ First National Bank’s performance in Ohio was primarily based on the results of examiners’ full-scope review in the Cleveland assessment area.

very small businesses. Examiners found that First National Bank's lending levels in the Cleveland assessment area reflected excellent responsiveness to the assessment area credit needs relative to the bank's deposit market share. Examiners noted that the bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas in that assessment area, low-income individuals, and/or very small businesses when considering bank lending distributions across geographies, and among borrowers, of different income levels. Examiners noted that the bank made an adequate level of community development loans in the Cleveland assessment area during the review period.

In Maryland,³¹ another area of concern for commenters, examiners found that the bank's lending levels reflected adequate responsiveness to credit needs in the Baltimore assessment area, and that the bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas in that assessment area, low-income individuals, and/or very small businesses. Examiners noted that the bank made an adequate level of community development loans in the Baltimore assessment area during the review period, given the bank's short tenure and competitive position in the market.

Examiners found that First National Bank had an adequate level of qualified community development investment activity. In the areas of Pennsylvania receiving full-scope reviews, the bank had an adequate level of qualified community development investment and grants. The bank's investments supported affordable housing and activities that promote economic development. The bank also purchased mortgage-backed securities with the underlying collateral consisting of loans to LMI borrowers within the Pittsburgh assessment area. In each of the Cleveland and Baltimore assessment areas, examiners found the bank's Investment Test performance to be adequate.

³¹ First National Bank's performance in Maryland was based on the results of examiners' full-scope review in the Baltimore assessment area.

With respect to the Service Test, examiners noted that, in the areas of Pennsylvania receiving full-scope reviews, First National Bank's delivery systems were accessible to essentially all portions of First National Bank's assessment areas and that the bank's services did not vary in a way that inconvenienced portions of the bank's assessment areas, particularly LMI geographies and/or individuals. Examiners also found that the bank provided an adequate level of community development services that were responsive to community needs. Examiners indicated that, in the Pittsburgh assessment area, First National Bank's employees provided technical assistance to community development organizations that provided an array of community services and access to affordable housing for LMI individuals, as well as technical assistance to organizations that supported economic development through programs that assist LMI and unemployed persons obtain jobs. In the Cleveland and Baltimore assessment areas, examiners found the bank's Service Test performance in each assessment area to be adequate.³²

First National Bank's Efforts Since the 2015 CRA Evaluation

FNB represents that, since the First National Bank Evaluation, First National Bank is satisfactorily meeting the lending needs of LMI borrowers and areas, as well as the lending needs of small businesses and farms located in LMI census tracts. FNB has continued to provide mortgage loan products targeted toward LMI borrowers—the Family Homeownership Program and the Family Home Improvement/Rehabilitation Program—that include features such as reduced down-payment requirements, flexible down-payment assistance, and reduced closing costs. The bank also offers flexible loan products, such as FHA and Department of Veterans Affairs (“VA”) products. First

³² One commenter alleges that FNB's overdraft practices were found to be unfair trade practices resulting in unjust enrichment as part of a class-action litigation, Ord v. First National Bank of Pennsylvania, No. 2:12-cv-00766-AJS (W.D. Pa. dismissed June 21, 2013). The case was settled without any admission of wrongdoing by the parties. Final Judgment & Order of Dismissal with Prejudice at 4–5, Ord (No. 2:12-cv-00766-AJS). FNB's practices have subsequently been reviewed by the OCC.

National Bank has continued to make qualifying community development investments, including Low Income Housing Tax Credit investments.

CRA Performance of Yadkin Bank

Yadkin Bank was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation, as of March 23, 2015 (“Yadkin Bank Evaluation”).³³ Yadkin Bank received a “High Satisfactory” rating for the Lending Test, a “Low Satisfactory” rating for the Investment Test, and a “High Satisfactory” rating for the Service Test.³⁴

Examiners noted that Yadkin Bank’s overall lending levels reflected good responsiveness to the assessment areas’ credit needs. Examiners also found that the bank’s geographic distribution of loans reflected good penetration of home loans, small business loans, and small farm loans throughout the bank’s assessment areas. Examiners found that the bank distribution of borrowers reflected good penetration among retail customers of different income levels and businesses and farms of different sizes. Examiners noted that the bank made extensive use of flexible lending practices to serve the assessment areas’ credit needs, including flexible small business loan products through the Small Business Administration (“SBA”) and the North Carolina Rural

³³ The Yadkin Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed loans reported pursuant to HMDA and CRA data collection requirements for 2012 through 2014. Examiners did not consider HMDA or CRA lending data from the former VantageSouth Bank, which merged with Yadkin Bank in July 2014. Examiners also reviewed community development lending, innovative and flexible business practices, qualified investments, and community development services from May 15, 2012, through December 31, 2014. Examiners considered the bank’s branch office distribution as of December 31, 2014. Examiners did not consider the bank’s branches acquired from VantageSouth Bank, which were located outside of the bank’s delineated assessment areas.

³⁴ The Yadkin Bank Evaluation included a full-scope assessment review of the bank’s assessment areas in the following geographies: the Durham–Chapel Hill, North Carolina, MSA; the Charlotte–Concord–Gastonia, North Carolina–South Carolina, MSA (“Charlotte assessment area”); and the bank’s assessment areas in non-MSA areas of each of North Carolina and South Carolina. A limited-scope review was performed in the Winston-Salem, North Carolina, MSA.

Economic Development Center. The SBA recognized the bank as the number one SBA lender in dollar volume in North Carolina. Examiners also noted that the bank offered flexible mortgage loan products through the VA, the FHA, the U.S. Department of Agriculture (“USDA”), and the North and South Carolina housing finance agencies. Examiners found that Yadkin Bank made an adequate level of community development loans.

In the Charlotte assessment area, an area of concern for commenters, examiners noted that Yadkin Bank’s lending levels reflected good responsiveness to assessment area credit needs. Examiners found that the bank’s geographic distribution of loans reflected adequate penetration throughout the assessment area. The bank’s distribution of borrowers was found by examiners to reflect good penetration among retail customers of different income levels, business customers of different sizes, and farms of different sizes. Yadkin Bank was found to have made an adequate level of community development loans in the assessment area.

Examiners observed that the bank’s overall level of community development investments was adequate. Yadkin Bank invested in small business investment companies, purchased bonds that help to finance affordable housing in North Carolina, invested in a bond that supports economic development and revitalization in distressed and underserved areas of North Carolina, and invested in mortgage pools secured by LMI borrower mortgages. The bank provided qualified grants and donations to organizations that primarily provide services to LMI families located within the bank’s assessment areas. In the Charlotte assessment area, examiners found that the bank had an adequate level of qualified community development investments.

Examiners found that the bank’s delivery systems were reasonably accessible to all portions of the bank’s assessment areas. Examiners noted that the bank’s services did not vary in a way that inconveniences portions of the bank’s assessment areas, particularly LMI geographies and/or individuals. Examiners found that the bank overall had provided a relatively high level of community development services, including in the Charlotte assessment area.

Yadkin Bank's Efforts Since the 2015 CRA Evaluation

FNB represents that, since the Yadkin Bank Evaluation, Yadkin Bank has continued satisfactorily to help meet the needs of LMI borrowers and communities, as well as the borrowing needs of small businesses and farms located in LMI census tracts. Yadkin Bank has continued to provide flexible loan products, such as FHA loans, USDA loans, and VA loans. Yadkin Bank's employees participate on the boards of organizations that support or sustain economic growth and provide consumer-finance training.

Views of the OCC

In its review of the proposal, the Board consulted with the OCC regarding First National Bank's CRA, consumer compliance, and fair lending records. The OCC is reviewing the bank merger underlying this proposal, considering the same convenience and needs factor as must be considered by the Board. The OCC separately received comments on the bank merger application and was provided with the comments received by the Board. The OCC is considering all of the comments, those received by the OCC and those provided to the OCC by the Board, in connection with its review of the bank merger application.

The Board has considered the results of a recent consumer compliance examination of First National Bank conducted by OCC examiners, which included a review of the bank's compliance risk-management program and the bank's compliance with consumer protection laws and regulations. The Board also has considered the results of a recent examination of First National Bank's compliance with the Fair Housing Act ("FHA"),³⁵ which included a review of the bank's lending data and policies and procedures to ensure compliance with the FHA.

The Board has taken these consultations with the OCC and the information discussed above into account in evaluating this proposal, including in considering whether FNB has the experience and resources to ensure that the organization effectively

³⁵ 42 U.S.C. § 3601 et seq.

implements policies and programs that would allow the combined organization to serve effectively the credit needs of all the communities within the firm's assessment areas. The Board expects FNB to ensure that First National Bank complies with any commitments or conditions that the OCC may request or impose in connection with its action on the bank merger proposal.

Additional Convenience and Needs Considerations

The Board also has considered other potential effects of the proposal on the convenience and needs of the communities to be served. FNB represents that as a result of the proposal, existing customers of Yadkin would have access to a complement of products and services that is comparable to or more expansive than those currently available at Yadkin, including trust services, investment products, insurance products, international banking, retirement plan and trust services, products for high-net-worth customers, and lease financing and other asset-based lending.³⁶ Moreover, FNB asserts that customers of both institutions would benefit from a more expansive branch and ATM network.³⁷

³⁶ A commenter expressed concerns about Regency Finance, a subsidiary of FNB, alleging that the company may violate state usury laws through the sale of high-cost credit insurance products. FNB contends that Regency Finance adheres to all relevant federal laws and regulations and state statutes, including those governing usury, and would continue to do so if Regency Finance were to operate in North Carolina. The Board will continue to monitor FNB's compliance with applicable laws and regulations through the supervisory process.

³⁷ Commenters urged FNB to develop a community reinvestment plan. Following its submission of the application, FNB developed a community benefits plan in consultation with commenters and other organizations. In addition, two community organizations urged the Board to approve the application on the condition that FNB successfully implement a community reinvestment plan. The Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. See, e.g., CIT Group, Inc., FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); Citigroup Inc., 88 Federal Reserve Bulletin 485 (2002); Fifth Third Bancorp, 80 Federal Reserve Bulletin 838, 841 (1994). In its evaluation, the Board reviews the

Conclusion on Convenience and Needs Considerations

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

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater 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 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

existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas.

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).

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

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. Both the acquirer and the target are predominately engaged in retail commercial banking activities.⁴¹ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would neither be a critical services provider nor would it be so interconnected with other firms or the markets that it would pose significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the 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.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.⁴² In reaching its conclusion, the

⁴⁰ For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order No. 2012-2 (February 14, 2012).

⁴¹ FNB primarily offers deposit, loan, wealth-management, insurance, and consumer-finance products. Yadkin primarily offers deposit, loan, wealth-management, and insurance products. In each of its activities, FNB has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

⁴² A 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

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 FNB with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

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 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.

In addition, a commenter requested an extension of the comment period for the proposal. The Board's rules contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. The commenter's request for additional time to comment does not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the Board determines not to extend the comment period.

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

By order of the Board of Governors,⁴³ effective February 24, 2017.

Margaret McCloskey Shanks (signed)

Margaret McCloskey Shanks
Deputy Secretary of the Board

⁴³ Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.