

FEDERAL RESERVE SYSTEM

Community Bank System, Inc.
DeWitt, New York

Order Approving the Acquisition of a Bank Holding Company

Community Bank System, Inc. (“Community”), Dewitt, New York, 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 Merchants Bancshares, Inc. (“Merchants”), and thereby indirectly acquire Merchant’s subsidiary bank, Merchants Bank, both of South Burlington, Vermont. Following the proposed acquisition, Merchants Bank would be merged into Community’s subsidiary bank, Community Bank, N.A. (“Community Bank”), Canton, New York.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 Federal Register 92814 (December 20, 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.

Community, with consolidated assets of approximately \$8.7 billion, is the 142nd largest insured depository organization in the United States. Community controls

¹ 12 U.S.C. § 1841 et seq.

² 12 U.S.C. §§ 1842.

³ The merger of Merchants Bank into Community Bank is subject to 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 April 6, 2017.

⁴ 12 CFR 262.3(b).

approximately \$7.1 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ Community controls Community Bank, which operates in New York and Pennsylvania.

Merchants, with consolidated assets of approximately \$2.0 billion, is the 406th largest insured depository organization in the United States, controlling approximately \$1.5 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Merchants controls Merchants Bank, which operates in Vermont and Massachusetts.

On consummation of the proposal, Community would become the 122nd largest insured depository organization in the United States, with consolidated assets of approximately \$10.7 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Community would control total deposits of approximately \$8.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Vermont, Community would become the 3rd largest insured depository organization, controlling deposits of approximately \$1.3 billion, which represent approximately 11.1 percent of the total deposits of insured depository institutions in that state.⁶ In Massachusetts, Community would become the 84th largest insured depository organization, controlling deposits of approximately \$92.7 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

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

⁶ State deposit data are as of June 30, 2016, unless otherwise noted.

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, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, the bank holding company upon consummation would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.⁹

For purposes of the BHC Act, the home state of Community is New York, and Merchants Bank's home state is Vermont.¹⁰ Merchants Bank also operates in Massachusetts. Community is well capitalized and well managed under applicable law, and Community Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").¹¹ Vermont has no statutory minimum age requirement,¹² and Massachusetts has none that applies to the proposed acquisition.¹³

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 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 Vt. Stat. Ann. tit. 8, §§ 1051-1064, 17101-17202.

¹³ See Mass. Gen. Laws ch. 167A, § 2.

On consummation of the proposed transaction, Community would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, there are no states in which Community and Merchants have overlapping banking operations, such that a state deposit cap would apply. The Board has considered all other requirements under section 3(d) of the BHC Act, including Community's record of meeting the credit needs of the communities it serves. 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.¹⁴ 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 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.¹⁵

Community Bank and Merchants Bank do not compete directly in any banking market. Based on 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.

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 financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and

¹⁴ 12 U.S.C. § 1842(c)(1).

¹⁵ 12 U.S.C. § 1842(c)(1)(B).

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 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.

Community and Merchants are both well capitalized and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange, with a subsequent merger of the subsidiary depository institutions.¹⁶ The asset quality, earnings, and liquidity of both Community Bank and Merchants Bank are consistent with approval, and Community appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Community, Merchants, and their subsidiary depository institutions, including assessments of their management, risk-management

¹⁶ As part of the proposed transaction, each share of Merchants common stock would be converted into a right to receive cash or Community common stock, or a combination of the two, based on a fixed exchange ratio. Community has the financial resources to fund the acquisition.

systems, and operations. In addition, the Board has considered information provided by Community, the Board's supervisory experiences with Community and Merchants 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, as well as information provided by the commenter.

Community, Merchants, and their subsidiary depository institutions are each considered to be well managed. Community has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. The directors and senior executive officers of Community 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.

The Board also has considered Community's plans for implementing the proposal. Community has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Community would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Community's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Community plans to integrate Merchants' existing management and personnel in a manner that augments Community's management.¹⁷

Based on all of the facts of record, including Community'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 the future prospects of the organizations involved

¹⁷ On consummation, two individuals currently serving as directors of Merchants will be added to the boards of directors of Community and Community Bank, and the current president and chief executive officer of Merchants will serve as the New England regional president of Community Bank.

in the proposal, as well as the records of effectiveness of Community and Merchants 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 currently 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.²⁰

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide loan applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers the 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.

¹⁸ 12 U.S.C. § 1842(c)(2).

¹⁹ 12 U.S.C. § 2901(b).

²⁰ 12 U.S.C. § 2903.

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of Community Bank and Merchants Bank, the fair lending and compliance records of both banks, the supervisory views of the OCC, confidential supervisory information, information provided by Community, 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 conventional home purchase loans, refinance home purchase loans, or home improvement loans offered to African American or Hispanic borrowers, as compared to white borrowers, by Community Bank in the Buffalo-Cheektowaga-Niagara Falls, New York, Metropolitan Statistical Area (“Buffalo/Niagara MSA”) and the Syracuse, New York, Metropolitan Statistical Area (“Syracuse MSA”) as reflected in data reported under the Home Mortgage Disclosure Act (“HMDA”)²¹ for 2015. The OCC considered the same adverse comment in connection with its review of the underlying bank merger application.²²

Business of the Involved Institutions and Response to Comment

Community Bank is a community banking franchise headquartered in upstate New York. It is a full-service bank that offers a wide range of financial services, with a primary focus on loans to consumers. Community Bank’s lending portfolio includes residential mortgage loans, small business loans, commercial and industrial loans, agricultural loans, and consumer loans. In addition to traditional deposit and loan products, Community Bank also offers insurance and investment products, and trust

²¹ 12 U.S.C. § 2801 et seq.

²² The OCC considered the CRA performance evaluation of each bank involved in the transaction and, on a prospective basis, the probable effect of the proposed bank merger on the convenience and needs of the communities to be served.

services. Community Bank's branches are generally located in smaller towns and cities within its geographic market areas.

Merchants Bank maintains 31 full-service offices in Vermont and one full-service office in Springfield, Massachusetts. Merchants Bank offers products and services for business and retail consumers, including residential and commercial real estate loans, commercial business loans and leases, wealth management products, and other financial services.

In response to the comment, Community asserts that all mortgage applications received by Community Bank are reviewed in accordance with the bank's policies and procedures for underwriting and are subject to all of the bank's policies and procedures with respect to fair lending. Community further asserts that its lending practices are based on criteria that ensure both safe and sound lending and equal access to credit by creditworthy applicants, and that the bank has comprehensive procedures and policies in place to accomplish these goals, including a "second review" process for any loan denial of a minority applicant; ongoing fair lending training for the bank's lending personnel; an annual fair lending risk assessment; and quarterly reports from the bank's chief compliance officer, director of internal audit, and chief risk officer to the board of directors of the bank regarding consumer protection, fair lending, CRA, and other laws and regulations.

Community argues that its lending record to minorities in the Buffalo/Niagara and Syracuse MSAs, as reflected in the 2015 HMDA data, is attributable to the low population of minorities in the communities in which its branches are located and is consistent with the fairly low level of minority mortgage loan applications that are processed by all HMDA reporting institutions in those MSAs generally. Community points to the CRA Performance Evaluation, conducted by the OCC in mid-2016, which reviewed the Buffalo/Niagara and Syracuse MSAs on a limited-scope basis and found that Community's lending performance in those areas was "not inconsistent" with Community's "good" lending performance in the assessment areas ("AAs") receiving a full-scope review. Community asserts that a comment on Community's acquisition of

Oneida Financial Corp. (“Oneida”) in 2015²³ raised the same issues, citing 2013 HMDA data with respect to the same areas.

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.²⁴

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.²⁵ 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

²³ See Community Bank System, Inc., FRB Order No. 2015-34 (November 18, 2015).

²⁴ See Interagency Questions and Answers Regarding Community Reinvestment, 81 Fed. Reg. 48506, 48548 (July 25, 2016).

²⁵ 12 U.S.C. § 2906.

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 AAs; (2) the geographic distribution of the company's lending, including the proportion and dispersion of the institution's lending in its AAs 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;²⁶ (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.²⁷ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

²⁶ 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).

²⁷ 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 may analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

CRA Performance of Community Bank

Community Bank was assigned an overall “Satisfactory” rating by the OCC at its most recent CRA performance evaluation, as of July 27, 2016 (“Community Bank Evaluation”).²⁸ Community Bank received “High Satisfactory” ratings for the Lending Test, Investment Test, and Service Test.²⁹ Examiners found that Community Bank provided a good level of community development services.

Examiners found that Community Bank’s lending levels reflected excellent responsiveness to credit needs and an excellent ratio of loans originated inside its AAs to loans originated outside its AAs. Examiners also found that the bank had a good distribution of lending among census tracts and borrowers of different income levels and businesses of different sizes. The examiners highlighted that Community Bank’s flexible lending activity had a positive impact on the evaluation of its lending performance in New York. Specifically, in the Buffalo/Niagara and Syracuse MSAs, which were areas of concern for the commenter, examiners conducted a limited-scope review and found that Community Bank’s lending performance was not inconsistent with its performance in the AAs receiving a full-scope review.

Examiners found Community Bank to have investments that reflected good responsiveness to the credit and community development needs of the bank’s AAs. Examiners noted that the bank’s investments in its AAs included investments in

²⁸ The Community Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and CRA data collection requirements from January 1, 2012, through December 31, 2015. The evaluation period for community development loans, investments, and services was from March 12, 2012, through July 26, 2016. As of the evaluation date, 14 of the bank’s 17 AAs were located within the state of New York. Consequently, the greatest weight was given to New York State in the determination of the bank’s overall CRA rating.

²⁹ Examiners conducted full-scope reviews of the Northern Region Non-MSA and Southern Region Non-MSA AAs of the bank, since those areas combined represented 79 percent of the bank’s total lending, 65 percent of the bank’s total number of branches, and 64 percent of the bank’s total deposits in the state of New York. The examiners performed limited-scope reviews of the bank’s performance in the MSA portions of the bank’s AAs, including the Buffalo/Niagara and Syracuse MSAs.

mortgaged-backed securities comprised of mortgage loans made to LMI individuals or to finance residences located in LMI neighborhoods, as well as investments in municipal bonds that supported the revitalization and stabilization of LMI tracts, middle-income census tracts designated as distressed or underserved, or designated federal disaster areas. In their limited-scope review of the Buffalo/Niagara and Syracuse MSAs, examiners found that Community Bank's investment performance was stronger in those areas than in the AAs receiving a full-scope review.

Examiners found that the bank's delivery systems were accessible to census tracts and individuals of different income levels throughout its AAs. Examiners also found that Community Bank's hours and services offered throughout its AAs were good, and services offered were comparable among its branch locations regardless of the income level of the census tract. Examiners further noted that the bank's performance in providing community development services was good. Examiners highlighted Community Bank's low-cost and free banking service products, including its free checking, savings, and online banking products. In their limited-scope review of the Community Bank's MSA AAs, examiners found that Community Bank's overall service test performance was weaker than in the non-MSA AAs receiving a full-scope review; however, in the Buffalo/Niagara and Syracuse MSAs, examiners found that Community Bank had branch distributions that were reasonably accessible to all portions of those AAs.

Community Bank's Activities since the Community Bank Evaluation

Community contends that, since the Community Bank Evaluation, it has made efforts to enhance its affordable housing products and programs designed to meet the needs of LMI individuals in its assessment areas. Specifically, Community asserts that it has recently expanded its U.S. Department of Agriculture ("USDA") Guaranteed Rural Housing Program coverage across its New York footprint, and it is making efforts to extend program coverage into Pennsylvania, Massachusetts, and Vermont, as well as Native American reservations. Community also asserts that it has expanded the number of loan officers it employs that are qualified to offer State of New York Mortgage

Agency affordable housing program loans from five in 2015 to 39 at present.

Additionally, Community represents that it is in the beginning stages of participating in lending programs through various community organizations.

Community asserts that it has expanded advertising efforts for its affordable housing programs across its footprint and specifically within the Syracuse MSA.

Community represents that it has employed advertising campaigns across traditional media and with local Syracuse sports teams and transit systems in order to reach LMI and minority communities. In November 2016, Community Bank retained a mortgage loan originator whose focus is serving the credit needs in the Syracuse market, including local marketing and outreach.

Community also asserts that it has made efforts to strengthen its community development outreach, lending, and investments across its footprint. These efforts include developing relationships with and committing to make donations to LMI and minority community organizations. Community also asserts that it has made plans to continue offering the financial literacy programs that Merchants offers in Vermont after consummation of the proposal.

CRA Performance of Merchants Bank

Merchants Bank was assigned an overall CRA rating of “Satisfactory” at its most recent CRA performance evaluation by the FDIC, as of February 17, 2015 (“Merchants Bank Evaluation”).³⁰ The bank received “High Satisfactory” ratings for the Lending Test, Investment Test, and Service Test.

³⁰ The Merchants Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and CRA data collection requirements from January 1, 2013, through December 31, 2014. The evaluation period for community development loans, investments, and services was from November 14, 2011, through February 17, 2015. The Merchants Bank Evaluation included a full-scope review of Merchants Bank’s combined AA, including the MSA and non-MSA portions. The bank’s performance in its non-MSA AA received more weight in the overall performance conclusions and ratings since it represented a larger geographic area and contained a higher lending volume than the MSA AA.

Examiners found that Merchants Bank's lending levels reflected good responsiveness to credit needs within its AAs, considering the size of the institution, loan portfolio composition, and level of competition within the combined AA. Examiners found that the bank had excellent distribution of home mortgage lending and a good distribution of small business lending among the AAs' low- and moderate-income census tracts. The bank demonstrated good penetration of loans to borrowers of different income levels, particularly low- and moderate-income individuals and businesses of different sizes, especially those with gross annual revenues of \$1 million or less. Additionally, examiners noted that the bank made a relatively high level of community development loans. Overall, Merchants Bank exhibited a good record of serving the credit needs of the most economically disadvantaged areas of its combined AA, consistent with safe and sound business practices.

Examiners found Merchants Bank to have made investments that reflected good responsiveness to the credit and community development needs of the bank's combined AA. Examiners noted that the bank's investments included a significant level of qualified community development investments and grants. In addition to making traditional equity investments, the bank made new investments in federal New Market Tax Credits and state affordable housing tax credits, partnered with a community development financial institution and a small business investment company, and made qualified donations to organizations involved in affordable housing and community and economic development.

Examiners found that the bank's delivery systems were accessible to essentially all portions of the bank's combined AA. Examiners also found that Merchants Bank's hours were comparable to other local institutions and its hours and services did not vary in a way that inconveniences any portion of the combined AA, particularly low- and moderate-income geographies and individuals. Examiners further noted that the bank provided a relatively high level of community development services, particularly in the area of financial literacy.

Views of the OCC

In its review of the proposal, the Board consulted with the OCC regarding Community Bank's CRA, consumer compliance, and fair lending records. The OCC reviewed the bank merger underlying this proposal, including the comment received by the Board.

The Board has considered the results of the most recent consumer compliance examination of Community Bank conducted by OCC examiners. The Board also has considered the results of the OCC's most recent examination of Community Bank's compliance with the Equal Credit Opportunity Act³¹ and the Fair Housing Act.³²

The Board also consulted with the OCC regarding Community Bank's compliance with conditions imposed by the OCC in connection with Community's 2015 acquisition of Oneida and the related merger of Oneida Savings Bank into Community Bank.³³ As a condition of approval of the bank merger application, the OCC required that Community Bank create a CRA AA Delineation Policy and modify its AAs in accordance with that policy.

The Board has taken these consultations with the OCC and the information discussed above into account in evaluating this proposal, including in considering whether Community has the experience and resources to ensure that the organization effectively implements policies and programs that would allow the combined organization to serve effectively the credit needs of all the communities within the firm's AAs.

³¹ 15 U.S.C. § 1692 et seq.

³² 42 U.S.C. § 3601 et seq.

³³ In its order approving the Oneida acquisition, the Board conveyed its expectation that Community ensure that Community Bank comply with the conditions imposed by the OCC. See Community Bank System, Inc., FRB Order No. 2015-34 (November 18, 2015).

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. Community represents that, as a result of the proposal, existing customers of Merchants Bank would have access to additional or expanded services, due to an expanded network of branch and ATM locations in its market areas. Upon consummation of the bank merger, Community Bank would offer the former depositors of Merchants Bank its products and services. Community Bank has represented that such products and services are enhanced with respect to areas such as consumer loans, overdraft lines of credit, agricultural lending, and small business lending. Community expects that the merger would also enable it to compete more effectively with national financial institutions in its market areas and improve its ability to meet the needs of its customers and communities in its market areas. Community Bank also represents that, on balance, no significant reductions in products or services would be expected as a result of the proposal.³⁴

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 Community, 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.

³⁴ Merchants Bank currently offers affordable housing loans through the Federal Housing Administration and the Department of Veterans Affairs. While Community Bank does not plan to continue offering such loans after consummation of the proposal, it plans to offer affordable housing loans through Fannie Mae, the USDA, and its own affordable housing program.

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 risk to the stability of the United States banking or financial system.”³⁵

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.³⁶ 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.³⁷

The Board’s experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that results in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets

³⁵ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601 (2010), codified at 12 U.S.C. § 1842(c)(7).

³⁶ Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

³⁷ For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order 2012-2 (February 14, 2012).

involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.³⁸

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 a target that is less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominately engaged in retail and commercial banking activities.³⁹ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose 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.⁴⁰ In reaching its conclusion, the

³⁸ See People's United Financial, Inc., FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

³⁹ Both Community and Merchants primarily engage in retail and commercial banking activities, and Community would continue to have a small market share following the proposed transaction.

⁴⁰ 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 Community 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 New York, acting under delegated authority.

By order of the Board of Governors,⁴¹ effective April 26, 2017.

Ann E. Misback (signed)

Ann E. Misback
Secretary of the Board

⁴¹ Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Powell and Brainard.